

MSd.

S E R I E S

O F T H E

D E C I S I O N S

O F

The Court of King's Bench

U P O N

S E T T L E M E N T - C A S E S ;

F R O M

The Death of LORD RAYMOND in *March* 1732 :

T O W H I C H I S A D D E D

A *Complete* ABRIDGMENT of the SUBSTANCE
of each Case, and two Tables of the *Names* of them.

Published for the Use of Gentlemen in the COMMISSION of the
P E A C E, and of BARRISTERS and others attending the
Quarter-Sessions.

By JAMES BURROW, Esq; *Master* of the *Crown-Office*, and one of the *Benchers* of the Honourable Society
of the *Inner Temple*.

L O N D O N :

Printed by His Majesty's Law-Printers,

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M DCC LXVIII.

46

SEVERAL

DECTIONS

The Court of Kings Bench

UPON

SETTLEMENT CASES

FROM

THE CASE OF LORD RAYMOND, in March 1782

TO WHICH IS ADDED

A COMMENTARY BY J. G. GLEN, Esq. of the Inner Temple, Barrister at Law.

Published for the Use of Gentlemen in the Commission of the Peace, and of BAR RISTERS and others attending the Court of Kings Bench.

By JAMES BURTON, Esq. Attorney at Law, and one of the Counselors of the Honourable Society of the Inner Temple.

LONDON

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1782

10 N. d. ~~15 H. L.~~

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O F T H E

D E C I S I O N S

O F

The Court of King's Bench

U P O N

SETTLEMENT-CASES;

F R O M

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TO WHICH IS ADDED

A *Complete* ABRIDGMENT of the SUBSTANCE
of each Case, and two Tables of the *Names* of them.

By J A M E S B U R R O W, Esq;

V O L U M E the F I R S T:

Containing Twenty-one Years, and including LORD HARDWICKE's
Time and LORD CHIEF JUSTICE LEE's.

L O N D O N

Printed for J. WORRALL and B. TOVEY, near *Lincoln's Inn*.

M DCC LXVIII.

76

S E R I E S

D E C I S I O N S

The Court of King's Bench

U P O N
S E T T L E M E N T - C A S E S ;



The Death of LORD RAYMOND in 1792
TO WHICH IS ADDED

A Complete ABRIDGMENT of the substance
of each Case, and two Tables of the Names of the

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Time and Lord Chief Justice LEE's.

L O N D O N :
Printed by J. Worsell and B. Toovey, near St. Paul's Church.
M D C C I X V I I I .

In Compliance with this Desire, and in Hope of
satisfying it in some Degree; and also in the Hope of
ascertaining this Subject, and thereby saving much Trou-
ble and vast Expence attending the Litigation of Disputes
between Parties concerning the legal Place of Settle-
ment of their Poor; the present Volume comes forth as

TO those worthy Noblemen and Gentlemen who
generously and disinterestedly bestow their Time
and Pains upon the Service of the Public, in acting un-
der his Majesty's Commissions of the Peace in their
respective Counties, The following Sheets are in-
scribed; with the greatest Respect to their Persons
and Characters; and a high Regard to the Dignity
and Utility of their Office.

They are published at the Request of many of their
Brethren, and of the Counsel attending their Quarter-
Sessions; who wished to see a more regular, full, and
authentic Collection of Settlement-Cases than they had
yet met with; and imagined that the Person who has
the Custody of all the Orders returned into the Court of
King's Bench upon Writs of *Certiorari*, and likewise of
all the Rules of Court relating to them, and who has
been present at and taken down all the Arguments of
the Counsel and all the Determinations of the Court
upon them, might have it in his Power to answer their
Wishes, if he would be at the Pains of selecting from
amongst his other Papers, and communicating to the
Public in a separate Collection, such as relate to this
single Subject only.

In:

In Compliance with this Desire, and in Hope of satisfying it in *some* Degree; and also in the Hope of ascertaining this Subject, and thereby saving much Trouble and vast Expence attending the Litigation of Disputes between Parishes concerning the legal Place of Settlement of their Poor; the present Volume comes forth as a *Specimen*.

If it shall meet with Approbation, and if Life and Health shall permit, it may soon be followed by another, and brought down to the present Time or perhaps further.

Inner Temple, 30th
June, 1768.

ADVERTISEMENT.

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THE constant Rule of *intitling* Sessions-Cases, when original Orders of Removal, and Orders of Sessions discharging or confirming them, are returned up into this Court on Writs of *Certiorari*, is as follows. The KING is named as *Prosecutor*; and the Inhabitants of the PARISH *charged with the Paupers* by the Order of Sessions, and thereupon *applying for the Certiorari* to remove the Orders into this Court, are named as Defendants.

But these Cases are *never* intitled in the Manner that very many of them are reported and cited in the common printed Books, viz. "*The Parish of A. against The Parish of B.*" Nor can they be found in the Rule-Books of the *Crown-Office*, under any such Title. When ever such a Case is searched for in that Office, it is necessary that the Inhabitants of the Parish *last charged* with the Paupers *by the Sessions* be considered as *Defendants*, at the Prosecution of the *King*. For Example—Two Justices remove *M. B.* from *Stroude* to *Lidney*: *Lidney appeals* to the Sessions. If the Sessions *confirm* the Order, then *Lidney*, standing *charged* with the Pauper by the Order of Sessions, *brings the Certiorari*; and the Title of the Cause is "*The King against The Inhabitants of Lidney.*" But *if* the Sessions had *quashed* the Order of the two Justices, then the Parish of *STROUDE* would have been charged with the Pauper, by the Determination of the Sessions; and in *that* Case, the Title must have been "*The King against The Inhabitants of Stroude.*"

ADVERTISING

THE constant Rule of issuing Session-Cases, when original Orders of Removal, and Orders of Session, are returned, is as follows. The King is named as Plaintiff, and the Defendant as the Parish charged with the Order of Session, and thereupon appearing for the Defendant to remove the Order into this Court, are named as Defendants.

But these Cases are never entered in the Session-book, nor any of them are reported, and cited in the common printed Books, viz. "The Parole of A. against The Parole of B." Nor can they be found in the King's Books of the Court-Office, under any such Title. When ever such a Case is entered for in that Office, it is necessary that the Inhabitant of the Parish charged with the Parole, by the Session, be considered as Defendant, & the Plaintiff, son of the King. For Example—Two Justices remove M. B. from St. Andrew to St. Andrew. I have applied to the Session. It is the Session's Order, then being, bearing charges with the Parole, by the Order of Session, against the Defendant, and the Title of the Case is "The King against The Inhabitant of St. Andrew." But if the Session had granted the Order of the Justices, then the Parish of St. Andrew would have been charged with the Parole, by the Determination of the Session; and in that Case the Title must have been "The King against The Inhabitant of St. Andrew."

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[illegible]

Trinity Term

6 & 7 Geo. 2. 1733.

Rex *versus* Inhabitants of Lidney.

IN *Easter* Term last a Motion was made to quash an Order of Sessions confirming an Order of two Justices made for the Removal of *Martha Brewer* from *Stroude* to *Lidney*.

The Case appeared to be this: — She was hired to *William Wake*, in the Parish of *Stroude*, for a *Quarter* of a Year: And if her Master and she *liked one another*, she was to *continue* for a Year, and to have 3*l.* for her Year's Wages. She entered into the said Service, and continued therein one *whole* Year, and received the said Wages of 3*l.*

Upon shewing Cause, now, against quashing the Orders, it was argued, that, as it was in *Martha Brewer's* Election, during the first Quarter, "Whether she would continue or not," she, consequently, could not be originally hired for a Year.

But the Court held this *conditional* Hiring to be a good Hiring for a Year; since the Master and she *did* like one another, and a Year's Service was actually performed under it.

Rex v. Inhabitants of Atberton, H. 16 G. 2. B. R. In both which Cases, such *conditional* Hirings were holden good. So also, *Rex v. Inhabitants of St. Ebb*, H. 1748 (without Defence). Also, *Rex v. Inhabitants of Ham*, M. 1751 B. R.

Per Cur. RULE MADE ABSOLUTE.

B

Rex

N^o 1.

See S. C. in
2 Str. 950.
and in *Sessions*
Cases, Edit.
1750, Vol. 1.
No. 175.

V. Post. N^o.
7. *Rex v. Inha-*
bitants of New
Windsor, H. 8
G. 2. B. R.

N^o 2. *Rex versus* The Inhabitants of St. Giles's in the Fields.

See S.C. in
Sessions Cases,
Edit. 1750,
Vol. 1. N^o
171. where
the Facts of
this Case are
rightly stated;
but the Report
of it is left
imperfect.

AN Order of Sessions, made upon Appeal from an Order of two Justices, adjudged the Settlement of *Jacob Maile*, an Infant of nine Years of Age, *not* to be in St. Clement's, but in St. Giles's, (to the former of which Parishes the two Justices had removed him from the latter) upon this Case stated; *viz.* His *Father's* Settlement *could not be discovered*: But his *MOTHER* had formerly gained a Settlement by Service in the Parish of St. Clement Danes. This was her last Settlement before her Marriage. *AFTER* her Husband *Maile's* Death, she married a *second* Husband, *John Simcock*, who was settled in St. Martin's in the Fields. The Sessions quashed the original Order, which removed the Infant-Pauper from St. Giles's to St. Clement Danes.

In Trinity Term last (1732, 5 and 6 G. 2.) a Motion was made to quash this Order of Sessions. And Serjeant *Baines*, who moved it, cited the Case of *Cumner and Milton*, 2 Salk. 528. where Mr. J. *Powell* said that, "If a Widow, having Children under seven Years old, marries a Man of another Parish, the Children shall go with the Mother for Nurture; but after seven Years of Age, they shall be sent back to the Parish where the Father was settled."

Afterwards, in the same Term, Cause was shewn by Serjeant *Corbet* against quashing this Order of Sessions. He argued, that the Child ought to be settled where the *Mother* is, by her Marriage, settled. He cited the *Case of St. George's Southwark and St. Katharine's, Michaelmas 1714, and also the Case of *Paulspury* and *Woodend*, Hilary 1726, "where a Widow gained a Settlement by being admitted into a small Copyhold; and it was adjudged, that she having gained such a Settlement, her Child followed her Settlement." Vide *Sessions Cases*, Edition 1750, Vol. 1. No. 116. and 2 Lord Raymond 1473.

*V. Sessions
Cases, Edit.
1750. Vol. 1.
N^o 69. and
2 Lord Raym.
1474.

Cur. In those Cases the Woman had gained a Settlement in her own Right: Whereas, here, she gains it *not* in her own Right, but in Right of her Husband.

RULE ENLARGED.

In this Term, it came on again: And in Answer to the Objection, "That the Child ought to be sent to the last Settlement of the Mother *before* her Marriage," the same Cases of St. George's and St. Katharine's and *Paulspury* and *Woodend* were cited,

cited, to prove "that after the Death of the Father, the Children shall be removed to the *new-gained* Settlement of the Mother."

The Counsel on the other Side agreed, that where a Woman has a Settlement of her *own*, the Children shall go to the last of such of her *own* Settlements: But her last Settlement in the present Case is *not* acquired in her *own* Right; and therefore is not within that Rule. In the Case of *Paulspury*, a Copyhold in *Paulspury* descended to the Widow; and the Child removed with her, *as Part of her Family*: And besides, that was in her *own* Right. So in the Case of *St. George's* and *St. Katharine's*, the Child went *as Part of the Family* of the Wife. In the Case of *Cumner* and *Milton* (2 *Salk.* 528.) *Powell J.* laid it down for Law, "That the Mother cannot gain a Settlement for her Children by a former Husband in the Parish where her *second* Husband is settled; being under Coverture, and having a Settlement there herself ONLY *as Part of her Husband's Family*, from whom she cannot be severed:" And no one said any Thing to the contrary of what he so laid down. 1 *Salk.* 482. pl. 35. *Anonymous.* "If a Man settled at *A.* marries a poor Woman who is settled at *B.* having Children by a former Husband, his Wife shall be removed with him to *A.*; but *her Children*, such of them as are *above seven Years old*, shall *not* be removed. (Those under seven Years of Age shall indeed be removed; but that only for Nurture: For they shall be kept at the Charge of the other Parish.)"

Mr. J. Probyn. Where the Father has a Settlement and dies, and the Children under seven Years of Age are removed with the Mother, it is for Nurture only: And in such Case, the Children shall at the Age of seven be removed back to the Place of the Father's last Settlement.

By the second Marriage of this Woman, she has acquired a Settlement in *St. Giles's*; and consequently her Settlement in *St. Clement's* is gone: And it seems that the Son must be sent to the Place where the Mother is settled at the Time of the Order made.

Mr. J. Lee. I think the Question has been determined. In a Case in *Cartbew* 449, between the Parishes of *Wangford* and *Brandon*, the Fact was, that three poor Men of *Wangford* came into the Parish of *Brandon*, and there married with three poor Widows of *Brandon*, who received Relief, &c; each of which Widows had

N. B. This is the same Case as that in *Salk.* 482. pl. 35. (which is there

anonymous.) See also *Cartbew* 279, 280. between the Inhabitants of *Shermanbury* and *Bolney*, S. P. accord.

Children by their former Husbands; (some under seven, some above seven;) And it was holden that the Children *did* NOT gain a Settlement in Wanford, nor were removable thither, to charge that Parish. As to the Nurse-children, they indeed might be sent thither for Nurture only: Yet still the Parish of Brandon must relieve them there, and not the Parish of Wangford. But the Children above the Age of seven Years ought not to be removed at all; being settled Inhabitants in the Parish of Brandon. And the Removal of the Mother shall have no Influence on the Settlement of their Children.

Mr. J. Page thought as Mr. Justice Lee did; and agreed that wherever Children are sent for Nurture, the Charge is to be paid by the Parish where they are legally settled.

However, this Case was again adjourned, for the present. But

Upon the last Day of this Term, Mr. J. Page and Mr. J. Lee were clear, upon the Case in *Cartbew*, (which, they said, they had again particularly looked into;) But as Mr. J. Probyn (who was now absent) had, when present, been of another Opinion; they at first adjourned it again:

But afterwards they declared that, they were thoroughly satisfied; and therefore quashed the Order of Sessions.

The Rule was this:

Per Cur. It is ordered that the Order of Sessions made in this Cause for quashing an original Order made in the same Cause, for the Removal of one *Jacob Maile* from the Parish of St. Giles in the Fields in the said County to the Parish of St. Clement Danes in the County aforesaid, be quashed for the Insufficiency thereof; and that the said original Order be affirmed.

I have transcribed the Rule itself; because I believe that in strict Point of Fact, the Court happened, by mere Mistake, to

pronounce a Confirmation of the Order of Sessions; though they meant to quash it: So that possibly some Gentlemen may have taken their Notes erroneously in this Respect.

Easter Term

7 Geo. 2. 1734.

Rex v. Inhabitants of Oakehampton.

No 3.

ON Monday 19th of November last (1733) a Motion was made by Mr. Serjeant Chapple, to quash an Order of Sessions confirming an Order of two Justices for the Removal of Mary Tooke, Widow, and her Children from Kenton to Oakehampton.

See a Scrap of
this Case in
Sessions Cases,
Edit. 1750,
Vol. 1. No
205.

It is stated in the Order of Sessions, "That her Husband was a Tide-waiter residing in Kenton; and had a Salary, for which he was rated by the Assessors of the LAND-Tax in Kenton, where he several Years resided; and that he was therefore rated to the Land-Tax in Kenton; and that was paid some Time by himself, and REPAID to him by the Collector of the Customs; and afterwards, by the Collector of the Customs. They adjudge that this was not a Settlement in Kenton: And therefore confirm the original Order.

Mr. J. Page and Mr. J. Lee desired him to look into it; and move it again.

Upon renewing the Motion on the Friday following (the 23d of November), it was argued, by Serjeant Chapple, that this is NOTICE within 3 & 4 W. & M. c. 11. sect. 6.

In Comb. 410. between Foston and Dalbury Parishes, or Blood's Case, Holt said, "That Payment of the Land-Tax had been held a sufficient Notice." 5 Mod. 331. S. C.

In Comb. 282. it was ruled, "That the rating a poor Occupier of a House, FOR HIS LANDLORD, to the King's Taxes, is a Rating him within the new explanatory Act to make a Settlement".

By 9 G. 1. fo. 403. there is a Provision that a Tax to the Scavenger's Rate or High-way shall not gain a Settlement. Now this is a Tax of a higher Nature: And therefore not being provided against, it still gains a Settlement.

RULE TO SHEW CAUSE.

Upon

Upon shewing Cause (on Monday 27th May 1734) it was argued by Mr. *Strange*, in Support of the Order of Sessions, "That a Tax-ation WITHOUT Payment gains no Settlement." So is 2 *Salk.* 523. between the Inhabitants of *Talborn* and *Boston*, expressly.

Then the Question is, "Whether he has PAID his Share towards the public Taxes or Levies of the Parish." And it is plain that he has not: For, it was not his own Money; but the Money of the Collector.

The Statute of 3 & 4 W. & M. c. 11. sect. 6. makes a Payment towards the publick Taxes or Levies (in general) of the Parish, to be necessary to a legal Settlement in it. It is in the plural: And therefore the Payment of one single Tax is not sufficient.

Lord *Hardwicke*. Suppose a Landlord had agreed to reimburse his Tenant; would not the Tenant be settled? The Collector did not pay it to exonerate the Parish, but to better the Man's Salary.

Cur. It has been settled, "that Land-Tax is a Parish-Tax, with- in the Act:" And his being taxed for his Salary makes no difference.

RULE MADE ABSOLUTE for quashing the Orders.

See the Cases of

Rex v. Inhabitants of Bramley, Hil. 9 G. 2. 1735. (Post. N^o 22.) S. P. accord.

Rex v. Inhabitants of Chidingfold, H. 30. G. 2. 1757. (reported in my 4th Part, p. 247.) S. P. accord.

Rex v. Inhabitants of Fulham, Mich. 33 G. 2. 1759. (reported in my 4th Part, p. 902. S. P. accord.)

Trinity Term

7 & 8 Geo. 2. 1734.

Rex v. Inhabitants of Sundrish.

N^o 4.

Wednesday 3^d
June 1734.

TWO Justices removed *Thomas Gates* and *Mary* his Wife and *Elizabeth* their Daughter from *Hever* to *Sundrish*; and upon Appeal to the Sessions, they confirmed the Order of the two Justices.

The Case stated on the Order of Sessions was this: *Thomas Perch*, by Indenture dated 25th March 1701, demised to *Thomas Gates*, the Father of *Thomas Gates* the Pauper, one Messuage or Cottage with a Garden, Orchard and Backside, &c. in *Hever*, for ninety-nine Years, at 5s. per Annum: And the said 5s. was the full and most improved

V. Sessions Cases, Edit. 1750, Vol. 1: N^o 200 S. C. and also Cases in B. R. 7, 8, 9, 10 G. 2. S. C. pa. 76, incorrectly named and stated.

RACK-Rent, for any Thing that appeared to the contrary. *Thomas Gates*, the Father, entered upon the said Cottage by Virtue of the said Lease; and lived in it, under the said Lease, to the Time of his Death. By his last Will, he devised the said Messuage and Premises, and all other his Estate both real and personal, to the said *Thomas Gates* the Son, his Heirs, Executors, Administrators and Assigns, upon Condition that he pay, or secure to be paid, unto *Frances* his Mother 20l. towards her Maintenance, if she should live to expend that Sum; and made him sole EXECUTOR, and died. *Thomas Gates* the Son proved the said Will, and entered upon the said Premises by and under the said Lease and Will, and LIVED THEREIN UNTIL and AT the Time of making the original Order. But it did not appear that he had paid or secured the said 20l. or any Part thereof; the said *Frances*, the Mother, dying in a very short Time after *Thomas* the Father.

The Sessions held it not to be a Settlement in *Hever*: And therefore confirmed the Order.

On Friday 10th May 1734, Mr. *Strange* moved to quash this Order of Sessions.

The General Question was, "Whether this *Thomas Gates* the Son be removeable on 13 & 14 Car. 2. c. 12." And, to prove "that he

" was

"was not removeable," he cited the Case of *Mursley and Grandborough* Parishes, 1 Str. 97. where it was determined, "that a Man, who comes to settle upon his own, cannot be removed from it."

And the same Thing had been before determined in the Case of Freeholds, 2 Salk. 524. between the Parishes of *Ryssip* and *Harrow*; and also in the Case of Copyholds of inconsiderable Value. *v. infra*.

Upon shewing Cause against quashing the Orders, on Saturday the 25th of last May, the Counsel for *Hever* Parish urged, that the VALUE of the Premises is principally to be considered.

They admitted that it has been determined, by Construction, "that a Person cannot be removed from his *Freehold*:" And the Reason is, "because it would be a *Disseisin*." And the Case of Copyholds was analagous to that of Freeholds. But *this* Man is removable within the express Words of the Act; since the Value is less than 10l. a Year. It makes no Difference, that he was *Executor* or *Devisee* of the original Lessee: For he is considered as *Assignee*; and there is no Difference between the Case of an Assignee and that of an original Lessee. If an Assignee should be holden to be irremovable, every Pauper who had a Mind to settle in a Parish would get an *Assignment* of a Lease of a Tenement of small Value, instead of taking an original Lease, and thereby render himself irremovable.

In the Case of *Mursley v. Grandborough*, they supposed that the Judges must have determined upon the Value: For there is no legal Difference between one Term for Years and another.

It was answered by Mr. *Strange*, That this Matter was settled in the Case of *Mursley v. Grandborough*; which was a Term for ninety-nine Years, at one Shilling per Annum: And the Person removed came to it by marrying the Administratrix of the *cestui qui trust* of the Residue of the Term, (which had been assigned in Trust.) And there it was said, "that the Court could not enter into the Value."

In the Case of a Copyhold, a Man cannot be removed from his own, though of very small Value. This was determined P. 11 Ann. in a Case between the Parishes of *Harrow* and *Edgware*, where the yearly Value was only 25s. Nor indeed can a Man be at all removed from what he comes to settle upon as his own, under the Statute of 13 & 14 C. 2. c. 12.

It was now argued a second Time, and the Counsel who argued in Support of the Orders said that the Case of *Mursley v. Grandborough* was upon a *beneficial* Lease. They observed that it is only a single Case: And Mr. Justice *Powys* differed from the Rest of the Judges,

And the Court rejected a *single* Authority, this very Term, in the Case of *Rev. v. Penelope Smith*.

They insisted that the present Case is directly within the Act: Which the Case of *Murley v. Grandborough* directly, as they asserted, contradicts.

The Counsel for quashing the Orders answered, That it is an adjudged Point, "That a *Freehold* and likewise a *Copyhold*, (though *EVER* so small) make a Settlement." 2 *Salk.* 524. between the Parishes of *Ryssel* and *Harrow*. And between *Harrow* and *Edgware* P. 11. *Ann. B. R.* And the Court have since gone further, even to Terms for Years, in the cited Case of *Murley v. Grandborough*.

It is objected that "that was a *beneficial* Lease." But the whole improved Value was only 30s. *per Annum*: So that That makes no Difference. The Pauper was considered as having come to it by OPERATION of LAW. All his Title to the present Possession was in Right of his *Wife*; and the greatest Part of the Cottage was let out: Yet the Court held that the marrying a Woman who had only so small a Part of it, made him *irremovable*. The Court only considered the legal Property of the Party, and not the Value.

In the present Case it is not stated absolutely, "that the improved Rent was no more than 5s. *per annum*." But, be that as it may, The Pauper came to it as a PURCHASER, under his Father's Will: And therefore he can't be removed from it.

Lord Hardwicke. This Case of removing a Man who lives upon his own, is a Case of a tender Nature: And the Court ought not to give too readily into it.

It has been adjudged, in Case of *Freehold*, and also of *Copyhold*, "that it cannot be done." And I do not see the Difference between them and *Leasehold*; unless *Leasehold* be within the Words of the Act. Therefore the Words of 13 & 14 C. 2. c. 12. are material. They are—"Whereas poor People are not restrained from going from one Parish to another; and therefore do endeavour to settle themselves in these Parishes where, &c; then, to another Parish, and at last become Rogues and Vagabonds: Therefore it is enacted, That upon any such Person or Persons coming so to settle as aforesaid in any Tenement under the yearly Value of 10l. two Justices may, upon Complaint of, &c, within forty Days, by their Warrant remove them."

It is plain that the Meaning of the Act was to remedy the Evil arising where poor People came to settle as is there before mentioned.

Now Freeholds and Copyholds are not within the Words of the Act. And though this be a Lease, yet it was made so long ago as in 1701: And this Man comes in under his *Father's Will*.

It is (together with other Things) charged with 20*l.* payable to his Mother, for her Maintenance: And it does not appear that any Evidence was laid before the Justices of the *Value* of this Lease.

In the Case of *Mursley v. Grandborough*, it was NOT a *beneficial* Lease of the *whole*; for a great Part was *let off*.

This appears to be a Cottage, Garden, Orchard and Backside. The Pauper did not come to settle upon it AS a RAMBLER; but derived his Right UNDER *his FATHER*. It would be too hard to give the Justices Authority to remove a Person so situated.

Therefore I think the Justices are mistaken in their Opinion: And the Orders ought to be quashed.

Mr. J. Page. I do not see that the Party can be removed *from his own*, if he comes by it *fairly*. Indeed if he should outlive the Lease, he may then be removed.

In an Action of Trespass between St. Peter's and St. Clement's, Lord Ch. J. Holt held, "that the Pauper could *not* be removed from "his *own* House, where there is *no Fraud*."

Mr. J. Probyn. The *Intention* of the Act was manifestly against Persons who came into Parishes on Purpose to gain a Settlement: And the Reason of the fixing ten Pounds a Year for the Value of the Tenement, is, because it requires such a Stock that the Man is not to be presumed likely to become chargeable. The Act intends to prevent People from fraudulently settling in a Parish by taking a Lease *themselves*, under the yearly Value of 10*l.* But *this* Man has it by a PRECEDENT Right; and his Right to enter upon it is as good as if it were a Freehold or Copyhold: He comes into it *upon a Title*; not by *Fraud*.

Ever so little in Point of Value is *enough* to make a Person irremovable from Freeholds and Copyholds: And in the Case of *Mursley v. Grandborough*, it is carried on to *Leasehold*. That Cottage was but 30*s.* a Year in the whole; and only *two Rooms* at most remained to the Pauper's Wife. Therefore that Opinion was *not* given upon the *Value*; but *because* it was *his own*, and *therefore* he was *not* removable from it.

These Premises must be of *greater Value* than 5*s. per Annum*. The Justices do not appear to have *inquired* into the Value. The Father has charged it, together with his other Estate, with 20*l.* So that it does not indeed appear that this *alone* was worth so much: But,

But, on the other Side, it does not appear that this Man *had* any other Estate; and probably he had not, or else they would not have removed him.

This *does* therefore appear, I think, to be a *beneficial* Lease. But *that* is not my principal Reason: For it is *his* own; and he is not *removable from his own*. And if a Man stays forty Days in any House in a Parish, from which he is *not removable*; from *that* Time, he is *settled there*.

Mr. J. Lee. This Case is, as it seems to me, within the *Letter* of 13 & 14 C. 2. c. 12. But it is plain that the Judges have *not* taken it upon the *Letter*, but considered the *Meaning* and Intention of it, and the *Preamble*, which describes *Wanderers* and Vagabonds coming into Parishes with bad Views and Designs.

But *Freeholds* and *Copyholds* and also *Leaseholds* where a Man has a *Right*, where the Tenement is *his* own, are not within the Intention of the Act: And the Justices can *not* remove such Persons from their *own*.

So before 9 G. 1. c. 7. *sect.* 5. If a Man made *ever so small a Purchase*, he gained a Settlement; even though he made it with an *Intent* to gain a Settlement. Therefore the Statute requires it to be of a certain Value; namely, of the Value of 30*l.* and that to be *bonâ fide* paid.

In the Case now before the Court, the Pauper lived in a Tenement which appears to be his *own*: And he had a Right to it as Executor and Devisee of his Father.

Therefore he did *not* come into the Parish of *Hever* to *settle himself*, but to take the Benefit of his own; from which, as being his own, and coming to him in this Manner, the Justices could *not* remove him *.

Per Cur. Therefore the Rule must be made absolute, to quash the Orders.

BOTH ORDERS QUASHED.

* *V. Rex v. Inhabitants of Marwood, Hil. 1756, 29 Geo. 2. B. R.*

Michaelmas Term

8 Geo. 2. 1734.

N^o 5.

Thursday 28th
Nov. 1734.

V. Sessions Ca-
ses, Ed. 1750,
Vol. 2. N^o
138.

Rex v. Inhabitants of St. George Hanover Square.

ON Wednesday the 20th Instant a Motion was made to quash an Order of Sessions, confirming an Order of two Justices made for the Removal of *Alice Wheeler* from the Parish of St. James Westminster to the Parish of St. George Hanover Square, and also to quash the said original Order.

The Case stated by the Sessions for the Opinion of this Court, was, That this *Alice Wheeler*, a Parish Child, was, by the Church-wardens and Overseers, with the Assent of two Justices, bound Apprentice, by Indenture, to George Leicester of the Parish of St. George Hanover Square, where she served forty Days, and gained a Settlement. Afterwards, and during her Apprenticeship, she was, by parol Agreement, hired out by her Master to John Hall, in the Parish of St. Mary le Bon, where she resided and worked above forty Days, (to wit, for the Space of one Year and upwards,) the said Apprenticeship continuing. During which Time, her Master George Leicester received her Wages, and found her in Cloaths.

The Sessions held her Settlement to be in the Parish of St. George Hanover Square: And therefore disallowed the Appeal, and confirmed the Order of the two Justices.

The Question was, Whether her serving above forty Days in the Parish of St. Mary le Bon, with the Consent and Approbation of her Master, did not gain her a Settlement in that Parish.

The Counsel for the Motion (who were for the Parish of St. George Hanover Square) argued that it did. And they cited the Case between the Parishes of *Castor* and *Aicles*, in 1 Salk. 68. as directly in Point: Also, the Case of *Aliballows on the Wall* and St. Olave's in Southwark, in 1 Strange 554. and the Case there cited, between the Parishes of *Holy Trinity* and *Shoreditch*, reported in 1 Strange 10.

But the Counsel, who shewed Cause against quashing these two Orders,

Orders, argued (on Behalf of the Parish of St. Mary le Bon) That this subsequent *parol* Agreement cannot refer to the first Agreement, so that the Service under it shall be construed to be a Service under the original Agreement which was by Indenture. It is true an Assignment by Deed might have this Effect: (1 Salk. 68. Keb. 304. 305.) But it was a great while before even an Assignment by Deed was held good.

But a *parol* Agreement must be entirely void, as to the Purpose of gaining a Settlement: For, the Agreement being void, the Service must be void. It was said, in the Case of *Rex v. Inhabitants of Buckingham*, p. 10 G. 1. B. R. "That where one is bound by Indenture, such Indenture cannot be discharged but by Deed or by the Sessions: And a *parol* Agreement is of no Avail, whilst the Indenture subsists." Therefore the Settlement of the Apprentice is in the first Parish, and not in the second.

V. 2 Lord
Raym. 1352.
1 Stra. 582.
S.C.

The Service in St. Mary le Bon is to be considered as a Service to the first Master, under these subsisting Indentures: And consequently the Settlement will be in the Parish where the Indenture was made. In the Case last mentioned, the first Master was held to be entitled to the Wages; which is the Reason of that Case. Now here the Master is stated to have received the Wages.

In the Case of *Rex v. Inhabitants of Ivinghoe*, P. 4 G. 1. the Court considered the Service of the Shepherd, who was hired by Knight for a Year, and, on Knight's quitting the Farm to Smith, served out the Year with Smith, as a Service to the first Master, and as being only lent out by him to the second; and so to have gained a Settlement under the first Hiring. So here, it is only a lending, by Leicester, of his Apprentice, to Hall: And the Settlement follows the Indenture.

1 Stra. 90.
92.

The Case of the *Holy Trinity v. St. Leonard's Shoreditch*, in M. 3. G. 1. materially differs from this Case. There, Ferrer was bound to Truby, with Intent that he should serve Green; which he did for three Years. The Court held this to be the same as a Turning-over; and that Truby was only a Trustee. And therefore they held it to be a Settlement in Green's Parish. But there it was stated upon the Order, "that there never was any Service or Intent to serve Truby."

So in the Case between the Parishes of *Allhallows on the Wall* and *St. Olave Southwark*, the original Agreement was, "to serve the other Master."

V. 1 Sir J. S.
554.

On the contrary, in Support of the Motion, it was argued, on Behalf of the Parish of *St. George Hanover Square*, That she was hired out

out

out by her Master to *John Hall* of *St. Mary le Bon*, and served a Year to *Hall*. And although a parol Agreement does not destroy an Indenture; yet this Agreement amounts to a Contract: And it proves that the Service to *Hall* was with the Consent of the Master. So that the Case of *Castor v. Eccles*, in *Salk.* 68. is directly in point for us. So also is *Allhallows on the Wall v. St. Olave Southwark*: For there the Apprentice was assigned over by Parol, the Indenture subsisting; and it was held a Settlement in the second Parish, where the Service was performed.

In the Case of the *King* against the *Inhabitants of Buckingham*, the Apprentice served his Master half a Year in *Buckington*; and his Master became a Bankrupt: Then he hired himself, without his Master's Consent, in *St. Michael's Sebington*, for a Year, and served; and the Master afterward delivered up his Part of the Indenture to the Apprentice. The Court held his Settlement to be in *Buckington*. But the Reason they gave was, "because there was no Consent of the Master:" And they added, "that if he had let himself to *J. N.* who lived in *St. Michael's Sebington*, with his Master's Consent, his Service would have made a Settlement."

The Case of the *Holy Trinity v. St. Leonard's Shoreditch*, is for us.

The Court will not take Notice of a Trust.

There is no Difference between an hired Servant and an Apprentice; but that the Apprentice must be bound by Indenture; and that the hired Servant must be hired for a Year, and serve for a Year: But in the other Case (that of an Apprentice) the last forty Days Residence and Lodging gains a Settlement.

In this Case, *Alice Wheeler* continued the Servant of the first Master all the Time; and the first Master found her Cloaths and received her Wages: But the last forty Days service and Residence being in *St. Mary le Bon*, she must be settled there. 2 *Salk.* 533. between *St. Bride's* and *St. Saviour's* Parishes. *H. 4 Ann. B. R.*

The Apprentice's Settlement does not depend upon the Master, or upon the Place where the Indentures were made; but upon the Place where the Apprentice serves and resides the last forty Days. The Settlement is in the Parish where the Apprentice lodges. *Rex v. Inhabitants of St. Mary Colechurch.* *Tr.* 3 G.

Lord Hardwicke. My Doubt is upon the Stating of the Order: It does not seem to me to be fully stated.

Taking this as the general Proposition—"That an Apprentice is bound to a Master who may dispose of him; and he hires him out as a Servant, for a Year, and he thereupon serves forty Days:"

I think

I think it is a Settlement, within 3 & 4 W. & M. c. 11. For this is a *lawful* Hiring, because the Master has the Power to hire him out. Therefore if it rested upon *this* only, I should think it a Settlement in *St. Mary le Bon*.

But my Doubt is, "Whether this *was* a *lawful* Hiring." For the Child is stated to be bound Apprentice by the Parish-Officers by Assent of the Justices of Peace. Now the Master does not treat her as an Apprentice, but hires her out. Now if the Justices had a Power to take back this Apprentice, then it will *not* be a *lawful* Hiring for a Year.

I have no Doubt how the Settlement would be, where a Master has an *absolute* Power over his Apprentice: But I cannot take it, upon *this* Order, to be an Assignment of the Apprentice.

Mr. J. Page was under the same Doubt. Besides, the Time not being out, if the Child comes back again after the Lending for a Year, and continues forty Days with the Master, I should very much doubt whether this would not quite turn the Matter back again, and make a subsequent Settlement in the first Master's Parish.

Mr. J. Probyn. I apprehend that this Indenture could not be discharged by *Parol*. If a Returning to the Master had appeared, it would have been gaining a new Settlement. But my present Thoughts are, that this is a good Settlement in *St. Mary le Bon*; whether you take it as a *Hiring and Service* for a Year, or whether you take it to be a *Service of the first Master*.

Here is a *Consent of the Master and Apprentice*: And therefore it is a good Hiring. An Apprentice hiring himself *without* the Consent of his Master is certainly not good.

My Lord objects, "that this is a Binding *by Assent of the Justices of Peace*." And if the Justices have Power to take the Apprentice back from *Hall*, then it is not a lawful hiring of her to him for a Year." But though the Justices may set aside the Indentures upon *Complaint*, yet they cannot do it *ex officio*: And here *neither* Side can complain; because there is a *mutual Consent*.

Then taking it to be a Service of the first Master—It is not necessary that the Apprentice should serve in the same Place where the Master lives. The *Service* gives the Settlement, without any Regard to the *Place where the Master lives*. The Case of the *Oxford Stage-Coachman*, whose Hostler served at *Chipping Wicomb*, was so determined,

1 Stra. 528.

Now this is a good Service in the Parish where she last serves forty Days: And therefore it is a good Settlement in *St. Mary le Bon*.

Mr.

Mr. J. Lee. I incline strongly to think it a good Service in St. Mary le Bon. It is the Service and Inhabitancy which makes the Settlement.

* Salk. 68. In the Case of * *Castor v. Aicles*, the Assignment was holden to amount to a Contract between the two Masters, though it was not considered as a strict Assignment. It went upon the Service and Inhabitancy: And the poor Child was holden to be settled at Aicles, where the second Master lived. The other Case of *Rex v. Inhabitants of Buckingham* went upon the Apprentice living at St. Michael's Sebington without the Consent of the Master; though the Apprenticeship continued. But if it had been with his Master's Consent, the Settlement would have been in St. Michael's.

Here it is stated, that the Apprenticeship was continuing: And the Consent of the Master is most manifest.

If a Man lets his Apprentice do Business in another Parish, the Apprentice, becoming a Pauper, must be sent to the Place where last legally settled for forty Days. In this Case, she could not be removed from St. Mary le Bon: For here was a Binding to her Master Leicester, and a Consent of the Master; and she lived there in a State of Inhabitancy, which was sufficient to gain a Settlement, if continued for forty Days.

Lord Hardwicke. This is putting it upon a new Point. I think there is a great Doubt as to the lawful Hiring. But upon the other Point, it does seem indeed to be within the 8th Section of the 3d & 4th of W. & M. c. 11. If the Apprentice, by the Consent and upon the Business of the Master, resides in a second Parish, (and we must take this to be the Business of the Master, because he consented) she is irremovable; and therefore gains a Settlement after forty Days of such Residence. In the Case of an Apprentice, it is not necessary that the Binding and Inhabitation should be in the same Parish.

* The Words of that Section are, "That if any Person shall be bound an Apprentice by Indenture, and in habits in any Town or Parish, such Binding and Inhabitation shall be adjudged a good Settlement."

The whole Court concurring, finally, in the same Opinion "that the Pauper was legally settled in St. Mary le Bon;"

The ORDERS were QUASHED.

V. Post, *Rex v. Inhabitants of East Bridgeford*, Trin. 1739, 13 G. 2. B. R.

Rex v. Inhabitants of St. Petrox, P. 1745, 18 G. 2. B. R.

Rex v. Inhabitants of Clapham, P. 1747, 20 G. 2. B. R.

Rex v. Inhabitants of St. Mary Kalendar in Winchester, Tr. 1748, 21, 22 G. 2. B. R.

Rex v. Inhabitants of Tavistock, Trin. 1767, 7 G. 3. B. R.

Hilary Term

8 Geo. 2. 1734.

Rex v. Inhabitants of Cirencester.

N^o 6.

ON Wednesday 13th November last, a Motion was made, by Mr. Stevens, to quash an Order of Sessions discharging an Order of two Justices for the Removal of S. G. &c. from Cirencester to Coln St. Aldwin's.

N. B. The Paupers were, by this Order of two Justices, removed to the same Parish whereto they had been formerly removed, and such former Order discharged. The first Order was made on the Complaint of the Parish of Minety: This latter, on the Complaint of the Parish of Cirencester. The Parish whither they were sent, on both Complaints, was Coln St. Aldwin's.

The special Case stated in the Order of Sessions is—That on the 12th of October, &c, the Paupers were removed, by an Order of two Justices, from Minety to Coln St. Aldwin's; which Order was discharged by the Sessions on Appeal. And it appearing that the present Order is for the Removal of the same Persons to the SAME Parish of Coln St. Aldwin; and that they have not gained any subsequent Settlement since the said former Order; and the Court [of Sessions] having heard Counsel on either Side touching the said present Order; and it being insisted on, in Point of Law, on the Behalf of the said Parish of Coln St. Aldwin, “that the said present Order of Removal ought not to have been made, the said former Order having been discharged; and that this Court [the Sessions] ought not to enter into a Re-examination of the Merits of the Case, or to hear any Evidence touching the said Settlement;” and this Court [the Sessions] being of that Opinion, and that the said present Order of Removal is illegal and ought not to have been made; do discharge the same accordingly.

The Objection to this Order of Sessions was, That the Sessions had erred, in supposing “that the Quashing of the first Order of Removal by the Sessions, was conclusive as to all OTHER Parishes, as

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“well

"well as to the two Parishes concerned in it:" And for this Reason, viz. that though one Parish has not sufficient Evidence to fix the Pauper there, yet another Parish may. The Case of *Bedingham and Kingston Bowsey* Parishes, in *Cartbew* 516. was cited, in Point: And v. 2 *Salk.* 486. S.C.

Mr. *Yates* shewed Cause, on the last Day of the same *Michaelmas* Term 1734.

Lord *Hardwicke* then said, He took it to have been clearly settled, "that where the Sessions upon an Appeal CONFIRM an Order of Removal, and thereby determine a Man to be settled in a Parish, such Determination is conclusive as to all other Parishes, as well as to the Parties concerned. But where the Order of two Justices is DISCHARGED at the Sessions, then it is only conclusive between the two Parishes concerned in such Appeal." "And if any other Parish into which the Pauper should have come, had Evidence more strong than the former Parish had, to charge the Parish whither he had been before removed by the discharged Order, they were still at Liberty to make Use of it." And this is reasonable: For a third Parish may be able to give better Evidence than had been given to the Sessions by the former Parish. And why should one Parish be precluded by the Insufficiency of the Evidence given by another? It may be collusive; It is, at least, *Res inter alios acta*; and should only bind the contending Parties.

Mr. *J. Page*. An Order confirmed binds all the World: But when discharged, it is binding only between the Parties concerned.

Mr. *J. Prebys* agreed to this Distinction: Because the latter does not determine WHERE the Pauper is settled; but only, that he is not sufficiently proved to be settled in the particular Parish to which the Justices had removed him.

Mr. *J. Lee*. I should have been glad to have looked into this Case. *Salkeld* differs somewhat from *Cartbew*, in reporting the Case of *Kingston Bowsey*.

An Order confirmed is final, because it determines the Place whither the Paupers are removed to be the Place of their Settlement. And it seems to me, that an Order discharged equally determines it not to be the Place of their Settlement; though it may be between other Parties, than those who would now have it to be so.

Lord *Hardwicke*. It may stand over, if my Brother desires it. But the former Litigation might be collusive and fraudulent: Or the Parish first complaining might be ignorant of the most material Evidence to charge the appealing Parish.

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It was accordingly then adjourned.

But now (on 28th January 1734.)

Lord *Hardwicke* declared they were *All* satisfied "that an Order of REVERSAL is conclusive ONLY on the *Parishes* concerned; and not on all other *Parishes*."

Mr. J. *Eer*. I am satisfied from the Information of a Gentleman who was Counsel in the Case of *Kingston Bowsey*, which is differently reported in *Salkeld* and in *Cartbew*, "that the true Report of it is in *Cartbew*;" and that an Order of Discharge is only final between the two CONTENDING *Parishes*.

Per Cur. unanimously—

The ORDER of Sessions QUASHED.

The ORDER of the two Justices AFFIRMED.

V. Rex v. Inhabitants of Bentley. P. 3 G. 2. B. R. in my 4th Part, pa. 354. S. P. settled accordingly.

Rex v. Inhabitants of New Windsor.

N^o 7.

ON Saturday the first of February 1734, Mr. *Proctor* moved to quash an Order of Sessions confirming an Order of two Justices, made for the Removal of *Diana Brooks* from *Chepping Wycomb* to *New Windsor*; together with the original Order.

Wednesday 12 Feb. 1734.

V. Sessions Cases, Edit. 1750, Vol. 2. N^o 163.

He made an Objection to the Order of the two Justices, That the Direction is to the Churchwardens and Overseers of the *Burrough* of *Chepping Wycomb*, not naming any *Parish*; and that the two Justices, who made the Order of Removal, do not appear to be Justices for the *Burrough* or for the *County*.

He also objected to both the Orders, upon the Merits.

The Case stated upon the Order of Sessions was—That in August 1731, she was hired to serve Colonel *Meyrick* at *Thorpe* in the *County of Surry*, and was to go into his Service a MONTH upon *Living*, and was to have 5*l.* a Year Wages; but was to go away from her said Service on a Month's Wages or a Month's Warning, to be at any Time paid or given on either Side by the said Master or Servant; and that she continued in her said Service near the Space of two Years without any other Hiring, and received her Wages quarterly; and that at the Time of her being hired to serve the said Colonel *Meyrick*, the said *Parish* of *New Windsor* was the Place of her last legal Settlement; and that she hath not since gained any other legal Settlement elsewhere or otherwise than by the said Hiring and Service to the said Colonel *Meyrick* as aforesaid.

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Upon shewing Cause (on the last Day of the same Term) against quashing the Orders, it was argued by Mr. *Pilsworth*, in Support of the Orders, That she gained no Settlement at *Thorpe*; because there was NO *Hiring for a Year*; nor was she *compellable to serve a Year*. Even a Hiring for a Year with Liberty to go away upon forfeiting a Month's Wages, would not have been within 3 & 4 *W. & M.*: For the Servant ought to be compellable to remain a Year.

The Mention of 5*l. per Annum* cannot amount to a Hiring for a Year: It is only to ascertain the Proportion of a Month's Wages after that Rate. And the contrary Intention appears from the receiving her Wages *quarterly*, and not yearly.

As to the Objections to the *Form* of the original Orders—They come too late, since 5 G. 2. c. 19, 21. which impowers the Sessions to amend and rectify them. Therefore having omitted to make their Objections before the Court of Sessions, they have *waved* them.

The first of these Objections is, "That the Direction is to the Churchwardens, &c, of the *Burrough*, without naming a *Parish*."

But if a Vill in a Parish have particular Officers, it is sufficient: And they shall be considered as distinct Parishes in Respect of their Poor. And the Burrough of *Chepping Wycomb* is a distinct Vill. And they have actually submitted and removed the Parties.

The second Objection is, "That it does not appear that the Justices are Justices of the Burrough or of the County."

But "*Burrough of Chepping Wycomb*" is in the Margin. The Intent of the Words in the Margin of an Order are to denote the Extent of the Jurisdiction of the Persons making it; (as *England* is a Lord Chief Justice's Warrant:) And they relate to every Part of it. And it appears upon the Order of Sessions, that these two Justices are Justices of and for the said Burrough. So that the Sessions, who have Power to rectify any Omissions in Point of Form, have supplied this.

On the contrary, it was argued by Serjeant *Wright* and Mr. *Proctor*, the Counsel for *New Windsor*, That this is a *Hiring for a Year*, at *Thorpe*. "5*l. a Year Wages*" is tantamount to 5*l. Wages for a Year*. And she was *compellable* to serve for a Year, unless by further Agreement the former Contract should be dispensed with.

This is a Point of great Consequence: For this is the constant Way and Method of hiring among Gentlemen. In the Case between the Parishes of *Lidney* and *Stroude* in *Gloucestershire**, a Hiring for a Quarter of a Year, and if she and her Master liked each other,

* *V. Antt.*
N^o 1.

other, she was to continue a Year and have 3*l.* for her Year's Wages. She did continue a Year, and received the 3*l.* Wages. This was held a good Settlement, on her having continued a Year. Yet that was not a direct and explicit Hiring for a Year.

Though, in this present Case, the Pauper received her Wages quarterly; it was no Part of the Agreement "that she should do so." Therefore that cannot vary the original Contract.

The Objections to the Order of these two Justices are not answered. There is no such Thing as Churchwardens and Overseers of a Burrough: They are *parochial* Offices. And a Parish is an *Ecclesiastical* District; a Burrough a *Civil* District.

As to the Justices appearing to be Justices for the Burrough or County—2 *Salk.* 474. *Rex v. Dobbyn*, proves it to be necessary that this should appear. And in the Case of *Rex v. The Inhabitants of Oulton in Cumberland*, P. 13 G. 1. B. R. The Court held that the Justices must shew their Jurisdiction. And the Order of Sessions can't supply this defect.

As to the late Act, of 5 G. 2. c. 19.—though the Sessions had Jurisdiction to amend; yet since they *have not done it*, the Objection is open. The Jurisdiction of this Court remains, since the Act does not take it away.

Though the Words "*Burrough of Chepping Wycomb*," be in the Margin; there are no Words of Reference: Therefore the Order of Sessions cannot help it; for, that is only recital.

Lord Hardwicke.—The Question upon the *Merits* of this Case, is, "Whether the Fact, as stated, be *Evidence of a Hiring for a Year*." For, if it be, we must adjudge upon the same Evidence.

I think it is: Or else you would overturn most of the Settlements in *England*, upon Hirings in Gentlemens Services. I believe the ordinary Way of Hiring is at so much a Year, and a Month's Wages, or a Month's Warning on either Side.

I think it is reasonable that the "having 5*l.* a Year Wages" should be understood as meant to fix for how long a time the Service was to be, unless sooner determined. And I do not think the Limitation of its being to cease upon a Month's Wages or Warning on either Side, will have any Effect: For that is the common Method. And it is expressly stated that she continued in her said Service near two Years: Her coming upon Liking for a Month, does not alter the Case, at all.

As to the Limitations of a Month's Wages or a Month's Warning—the Case of *Lidney v. Stroude* is a strong Case: For that Service might have been determined at any Time.

Therefore I think the Justices might have stated this to be a Hiring for a Year.

I do not think we can take the Sessions to have amended the Order of the two Justices, only because they had Power to amend it. But I think it is a Settlement at *Thorpe*: And therefore the Sessions should have discharged the first Order.

Mr. J. Page. I am of the same Opinion:—I think the “having 5*l*. a Year Wages” shews that it was a Hiring for a Year. It is defeazible indeed: But so is an absolute and expresse Hiring for a Year, wherever there is a Power to determine it sooner.

The other Objections against the original Order are out of the Case, because the Merits are plain: And upon them it ought to have been discharged by the Sessions.

Mr. J. Probyn. The natural Construction is, that it is a Hiring for a Year at 5*l*. Wages: And it is tantamount to saying that she was hired for a Year at 5*l*. a Year Wages.

The Rest is Matter which is to go in Defeazance of the Contract. But notwithstanding those eventual Limitations, the Service actually subsists for near two Years: Though they might have avoided the Contract, they have not.

Mr. J. Lee was of the same Opinion, “that upon the Face of this special Order, it appears that she was legally settled at *Thorpe*.” For it is stated “that she was hired to Colonel Meyrick at *Thorpe*.” Now a general Hiring is a Hiring for a Year. Then it is stated “that she was to have 5*l*. a Year Wages.” The Contract depends upon the first Hiring. The Parties had it indeed in their Power to avoid the Contract: But they have not done so.

The Reason of making a Hiring for a Year requisite, is the Credit of the Person thought worthy to serve for a Year. And here it is as strong: For after Trial, the Master lets the Service go on for near two Years. Therefore the Words and Intention of the Act are complied with in this Case.

Per Cur. unanimously

BOTH ORDERS QUASHED.

(See the Cases referred to at the End of N^o V.)

Easter

Easter Term

8 Geo. 2. 1735.

Rex v. Inhabitants of Stepney.

N^o 8.

ON Tuesday 11th of February last, a Motion was made to quash an Order of Sessions confirming an Order of two Justices made for the Removal of *A. B.* from *Chesham* in *Bucks* to *Stepney* in *Middlesex*.

Friday 25th
April 1735.

V. Cases in
B. R. 7, 8, 9.
10 G. 2. Pa.
156. S.C.

The first Exception was, That the Order of the two Justices is too uncertain, having no County mentioned in the Margin, and being directed to the Churchwardens and Overseers of two Parishes in two different Counties, (*viz.* *Stepney* in *Middlesex*, and *Chesham* in *Buckinghamshire*;) And they only call themselves Justices of the Peace for the County aforesaid. So that they do not appear to have any Jurisdiction: For by 13, 14 C. 2. c. 12. the Jurisdiction is given to the Justices of the County where the Pauper comes to inhabit. And it is incumbent upon the Justices to shew "that they have Jurisdiction." It ought to appear upon the Face of their Order "that they were Justices for the County of *Bucks*." 2 Salk. 474. *Rex v. Dobbyn*.

A second Exception was, That the Order is all by Way of Recital, and therefore has no adjudication: For it affirms nothing. It only says,—“Whereas it appears to us, &c; and we do accordingly “adjudge:” So that it contains no positive Words; but is all mere recital, without any Adjudication.

The Counsel, who shewed Cause against quashing the Orders, endeavoured to defend the Order of the two Justices against these Objections.

It runs thus: “Whereas Complaint hath been made by you the “Churchwardens and Overseers of the Poor of the said Parish of “*Chesham* unto Us, whose Hands and Seals are hereunto set, two of “his Majesty’s Justices of the Peace, one of us of the Quorum, for
“ the

"the County AFORESAID, That, &c.:" And then it goes on—"And we do accordingly adjudge." This is a direct and positive Adjudication.

And as to the other Objection, It is a good Order enough, they said, unless the Court will *presume* it to be made by Justices of *Middlesex*. But the Complaint was made by a Parish in *Buckinghamshire*; the Paupers resided in *Buckinghamshire*; and the Examination was taken in *Buckinghamshire*. Therefore the Court will not presume that the Justices of *Middlesex* did all this; since the Nature of the Facts determine the contrary.

In a Case between the Parishes of *Horsham* and *Henfield*, B. R. P. 5 G. 1. The Order was expressed to be made "on Complaint by you," in general, not saying *which* Parish complained. The Court held that the Complaint must be necessarily intended to be made by that Parish who were *aggrieved* by the Residence of the Paupers.

So here, it is sufficiently certain to a common Intent, "that this Removal must have been made by the Justices of *Bucks*:" And the rather, because the *Certiorari* is directed to the Justices of the County of *Bucks*.

Lord Hardwicke.—The Insertion of the Word "*And*," in this Order—"Whereas it appears to us, &c; *And* we do accordingly adjudge") does, in *Strictness*, connect the Recital; and grammatically makes the whole Sentence to be recital only. But *that alone* would not have very great Weight with me: It would be too hard to quash for *this*, since there are the Words "*We do adjudge*." But it is quite uncertain, upon the other Exception, for *which* County they are Justices.

As to what has been urged in Respect of the Court's presuming or intending them to be Justices of *Middlesex* in order to make it *bad*;—the Answer is, "that the Court can *intend nothing at all* about it." And it is not like the Case between *Horsham* and *Henfield*: For there the strict Sense of the Word *you*, was, "that the Complaint was made by *all* of them;" and therefore it was in Substance well. I do not think therefore that this Exception has received or can receive an Answer.

Mr. J. Page.—As to the *Intendment*—we can intend *nothing*. The Order ought to *appear* to us to be good: Which this does not, for the Word "*aforesaid*" equally relates to both Counties.

Mr.

Mr. J. PROBYN.—We cannot support these Orders by Intendment: For, those who act under a Jurisdiction given by Act of Parliament must shew their Jurisdiction.

Mr. J. LEE was of the same Opinion.

Per Cur. unanimously

The Rule must be made absolute to QUASH THE ORDERS.

Rex v. Inhabitants of St. Peter's in Worcestershire. N^o 9.

ON Wednesday 5th of February last, a Motion was made by Mr. Wilbraham, to quash an order of Sessions vacating and setting aside an original Order of two Justices made for the Removal of Joseph, the Son of Joseph Haighington, from St. Peter's in Worcestershire to Old Swinford in Staffordshire. The two Justices removed him as being a Bastard born on the Body of one Hannah Aske, at the House of R. B. in S. in the Parish of Old Swinford.

Saturday 3d

May 1735.

V. Sessions Ca-

ses, Ed. 1750,

Vol. 2. N^o

180. pa. 298.

Original Order —

“Whereas Complaint hath been made by Churchwardens, &c, of St. Peter's, &c, That Joseph Haighington and Joseph his Son (being a Bastard) have lately intruded themselves into your said Parish of St. Peter's, there to inhabit as your Parishioners, contrary to the Laws relating to the Settlement of the Poor; and are there likely to become chargeable, if not timely prevented; And whereas upon due Examination and Inquiry made into the Premises, upon the Oath of the said Joseph Haighington, it appears unto us, and we accordingly adjudge, that the said Joseph the Son is likely to become chargeable unto the said Parish of St. Peter's; and that the last legal Place of Settlement of the said Joseph the Son was in the said Parish of Old Swinford aforesaid, in which Parish he was born on the Body of one Hannah Aske (being a Bastard) at the House of Ralph Boulton in the Parish of Old Swinford:

“These are therefore, &c.”

Old Swinford appeals to the Sessions.

The Sessions state this special Case.—And whereas upon the Examination of Joseph Haighington upon Oath in this Court, the said J. H. gave in Evidence, “That for seven Years together, he travelled with the said Hannah Aske as wandering Persons from Place to Place, till the Time of the Death of the said H. A. which was about fifteen Weeks since; and that during all that Time they

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“cohabited

"cohabited and lay together as Man and Wife:" (and it did not appear that the Marriage was ever questioned in the *Life-time of the said Hannab*) "That during the Time that he and the said *H. A.* did so cohabit as Man and Wife, the said *Hannab* was delivered of three Children: The said *Joseph*, one of them, who was the Person removed by the said Order, being of the Age of five Years or thereabout, was born in the said House of *R. B.* of *S.* in the Parish of *Old Swinford*. That the said *Joseph* and the other two Children were reputed as his Children, and baptized as the legitimate Children of him and the said *Hannab*. That he and the said *Hannab Aske* were never married." It appearing to this Court, upon the Evidence of the said *Joseph Haighington*, That the said *Joseph* the Infant was born during the Time that the said *J. H.* and the said *H. A.* did cohabit and lie together and were reputed as Husband and Wife; and there being no other Evidence; this Court is opinion that the Evidence of the said *J. H.* can not support the Order, so as to bastardize the said *Joseph* the Infant removed; the said *J. H.* having cohabited with the said *Hannab* near seven Years as Husband and Wife. And therefore this Court [the Sessions] doth order that the said Order be vacated and set aside, with ten Shillings Costs. And the same is vacated, &c.

The Counsel, who now shewed Cause (on Behalf of the Parish of *Old Swinford*) against quashing the Order of Sessions, said, that the Order of the two Justices was absurd; because it called the Bastard the SON of *J. H.*: Whereas a Bastard is *nullius Filius*. But the Child did not appear to be a Bastard. For even admitting the Validity of the Evidence, "That *Hannab Aske* was never married to *J. H.*" yet she might be married to another Person. But this *Joseph Haighington*, who gave the Evidence, could not be a proper Witness in the Case: For no-body can be adjudged a Bastard without the Evidence of the Woman. The Order of the two Justices is a bad one: And the Sessions have acted properly in discharging it.

LORD HARDWICKE. — Surely there is no Ground to support the last Order (the Order of Sessions). The first Order indeed goes a little too far in calling him a Bastard, *the Son of J. H.*; (because, strictly speaking, a Bastard is *nullius Filius*;) But that is only an Impropriety; and the Order is therefore well enough, for the Purpose of removing the Pauper to *Old Swinford*, where he was born.

As to the Order of Sessions—It is an apparent Fact, that *Joseph Haighington* himself was never married to her. And what is there to make

make him an incompetent Witness? It was an Objection to an Order of Bastardy, two Terms ago*, "That it was founded upon the Evidence of a married Woman, which ought not to be admitted to discharge her Husband." But || this Man does not swear to discharge himself: For whether he be the legitimate, or only the natural Father of the Child, he is equally bound to maintain it.

* M. 8 G. 2.
Rex v. Willey.
31st Oct. 1734.
V. Post, Rex
v. Inhabitants
of Stockland,
16th June
1762.

The ORDER of SESSIONS was QUASHED; and
The ORDER of the TWO JUSTICES AFFIRMED.

The Rule is entered in the following Words:

"Saturday next after three Weeks from the Feast-day of Easter,
" 8 G. 2.

Worcestershire.
The King against
The Inhabitants of
the Parish of St. Peter's in the said County.

"IT is ordered, That the Order of Sessions made in this Cause for quashing the original Order made in the same Cause for removing one Joseph Ask from the Parish of St. Peter's in the said County of Worcester to the Parish of Old Swinford in the said County, be quashed for the Insufficiency thereof: And that the said original Order be affirmed.

"On the Motion of Mr. Wilbraham."

Rex v. The Inhabitants of St. Maurice in Winchester. N^o 10.

TWO Justices having removed Joseph Talmage from St. Maurice's to St. Mary Calendar's in Winchester; on Appeal, the Sessions discharge this Order.

The Case appeared to be this:

William West a Certificate-man of St. Thomas's came, about 1718, or 1719, by Certificate, into the Parish of St. Mary Calendar in Winchester. About 1721, he was chosen one of the Constables for the City of Winchester (which consists of several other Parishes besides the Parish of St. Mary Calendar,) and legally placed in that Office, and executed, in and through ALL PARTS of the said City, the said Office, for one whole Year: And during that whole Year, and as well for some Years before, as ever since, he constantly re-

V. 2 Stra.
1014. S.C.
(very short.)
Also Sessions
Cases, Ed.
1750, Vol. 1.
N^o 315.

~~lived and inhabited in the said Parish of St. Mary Calendar.~~ That, afterwards, he took *Joseph Talmage* an Apprentice to him, by Indenture duly executed; who continued with him as such for about four Years and a half: After which Time the said *Joseph Talmage* married, and intruded himself and his Wife into *St. Maurice's*; where he staid for about three or four Months, till being likely to become chargeable to the said Parish he was removed by an Order of two Justices to *St. Mary Calendar's*; who appealed to the Sessions. The Sessions, upon the Appeal, held "That *Joseph Talmage*, by Virtue of his being Apprentice to *William West*, or Residence with him as such in *St. Mary Calendar's*, did not gain any Settlement in that Parish: For that *William West* had not, by serving the Office of Constable for the said City previous to the Time of taking such Apprentice, legally avoided or altered the Settlement he was acknowledged by the Certificate to have in *St. Thomas's*." And therefore the Sessions quashed the Order of the two Justices.

On Monday 27th of January last, a Motion was made by *Mr. W. Eyre*, to quash the Order of Sessions. For that *William West*, the Master, had before he took this Apprentice AVOIDED his Certificate, by having executed this public annual Office in the Parish of *St. Mary Calendar*, being legally placed in the said Office.

Consequently, the Apprentice gained a Settlement in the same Parish; being quite out of the Statute of 12 Ann. st. 1. c. 18. sect. 2. which excludes an Apprentice from gaining a Settlement by serving a Person who came into a Parish by Certificate, and had not afterwards gained a Settlement therein.

On shewing Cause (within the same Term) why the Order of Sessions should not be quashed, it was insisted, That the Act of 9 & 10 W. 3. c. 11. must be intended to mean a parochial Office, in which the Certificate-man is placed by the Choice, or at least with the Approbation of the Parish. Whereas this is a foreign Appointment, and not the Act of the Parish; nor was it in their power to remove him from it. Therefore the Case is not within this Statute.

The Counsel on the other Side compared it to some Cases on 3 & 4 W. & M. c. 11. which says, "That if any Man shall for himself and on his own Account execute any public annual Office or Charge in any Town or Parish, during one whole Year, he shall be adjudged and deemed to have a legal Settlement there, without Notice."

To

To which it was answered, by the Counsel who were for supporting the Order of Sessions, "That the present Case did not arise upon 3 & 4 W. & M. c. 11. but on 9 & 10 W. 3. c. 11."

This Argument was on *Wednesday* 5th of *February*: And the Difficulty that then occurred to Lord *Hardwicke* was upon the Consequence of determining both these Acts in the *same* Manner. For, there is this Difference between them—Upon 3 & 4 W. & M. c. 11. the Question is, What shall amount to Notice to the Parish. And it enacts that one of these Equivalents shall be the executing any public annual Office in the Parish for a Year. But on the 9 & 10 W. 3. c. 11 not only the Parish had Notice before, by the Certificate, but, the Notice amounts to nothing; because the Parish cannot remove him, till he becomes actually chargeable.

So that there is a great Difference in Point of Consequence. In the one Case they may remove him, if he is likely to become chargeable: In the other Case they cannot; and yet when he shall have served his Year out, the Certificate is gone.

There was some Doubt too, Whether the Instances put in these Acts are upon the Foot of Notoriety *merely*, or whether they go upon the Idea of a Reward to the Person for his Service, and the Value and Credit of the Office he has served.

Mr. J. PROBYN and Mr. J. LEE inclined strongly to the latter Opinion; and thought that the Act should be construed liberally in Favour of Certificate-men.

THE COURT, upon the first Argument, took Time to consider it; and to look into the Cases.

ADJOURNED.

Now, upon the second Argument, the Counsel who argued in Support of the Order of Sessions (that is, on Behalf of the Parish of *St. Mary Calendar*;) observed that it is now confined to a single Question, "Whether this be *such* an Office as will avoid the Certificate." If it is, then the Settlement is in *St. Mary's*.

The Case of *The Queen v. The Inhabitants of St. Mary Reading*, the Case of a Warden in Nature of a Tithing-man, *H. 9 Ann.* was upon 3 & 4 W. & M. c. 11. There are the Words; "in a Town or Parish." And under *that* Act the Paupers were removeable before they became actually chargeable. [*V. Cases of Settlements*, Ed. 1742, *pa.* 3. and *Lucas's Reports* (10 *Mod.*) 13, 14, 15.

The 8 & 9 W. 3. c. 30. compels the Parish to receive a Certificate-man: And therefore it ought to be considered upon the Foot of Estoppels.

Estoppels. The 9 & 10 W. 3. c. 11. is the Act upon which this Question arises: And the Person is not removable *till* he becomes *actually* chargeable.

* V. Cases of Settlements, Ed. 1742, N^o 95. and Foley's Poor-Laws, pa. 133. S. C.

The Case between the Parishes of * *Garfington* and *The Holy Trinity* in *Oxford*, H. 2 G. 1. was determined upon another Point. A Certificate-man executed the Office of Tithing-man, for a Year; but was not sworn in till half the Year was out. An Exception was taken to the original Order for Want of a Complaint of his being *actually* become chargeable: And upon that Exception it was quashed.

This is not nor can be esteemed an Execution of an annual Office *in his Parish*; nor had his Acts any Relation or Confinement to the Parish: He was a *City-Officer*, *not* a *Parish-Officer*.

The Counsel on the other Side (for quashing the Order of Sessions) observed, The choice was by the whole City, as appears from the State of the Case: So that there was no Inconvenience or Surprise.

The Cases of constructive Notice are out of this Question: For the only Question here is, Whether the Certificate-man avoided his Certificate.

The Act of 3 & 4 W. & M. is enlarged by 9 & 10 W. 3. For the latter does not confine the Execution of the Office to be *upon his own Account*: Therefore an Execution as Deputy for another Person would be good upon *this* latter Act. And there are other Instances, beside those mentioned in the Act, that will gain a Settlement—As renting Lands in different Parishes. *M. 9 G. 1. Rex v. The Inhabitants of Broxbourn. Rex v. The Inhabitants of Melton.* The Court held it sufficient, though all the Lands were not within the Parish, according to the strict Letter of the Act. In *P. 5 G. 1.* between the Parishes of *East Woodhay* and *Burclear*, a Certificate-man married a Copyholder, and lived three Years; and by that Means gained a Settlement. [*Cases of Settlements*, Ed. 1742, N^o 121.]

In the Case of *Garfington v. The Holy Trinity* in *Oxford*, the Tithingman was legally chosen, and sworn-in in sufficient Time: Therefore the Court held it a good Settlement. But the Counsel for *Garfington*, the Merits being against them, objected to the original Order; and upon those Objections, it was quashed.

Mr. Justice LEE. — It is as you state it. My Account is, that the Case was upon this very Point: A Certificate-man was appointed a Tithingman by the Steward of a Leet: And he served a Year; but was not sworn in till half the Year was expired. The Court inclined that

that it was a good Settlement: But being a new Case and somewhat doubtful, they ordered a second Argument; and Lord *Parker* ordered the Counsel to speak to this Point, "Whether he was *legally* placed in the Office, or not, as not having been sworn "till half the Year was expired." The original Order was afterwards quashed for Want of Complaint.

The Counsel for quashing the present Order of Sessions proceeded; and cited the Case of *St. John's Hertford* and *Amwell*: It was said that the Act never designed to put Certificate-men in a worse State than before. [V. *Cases of Settlements*, pa. 108, N^o 143. S. C. *Trin.* 1722.]

It would be hard to confine this Clause to *parochial* Offices; because they could not be appointed Churchwardens or Overseers, without being Parishioners and substantial Inhabitants.

In the Case of *Garfington v. The Holy Trinity in Oxford*, Lord *Parker* said, "that these Statutes in Restraint of Settlements must be taken *strictly*."

LORD HARDWICKE.—The State of this Case is, That a Man comes, by *Certificate*, from the Parish of *St. Thomas* to *St. Mary Calendar's* in *Winchester*; and is appointed a Constable for the City of *Winchester*.

The Question is, "Whether the Apprentice of this Man gained a Settlement in *St. Mary's* by serving an Apprenticeship to him there."

That Question immediately depends upon the Act of 12 *Ann. stat.* 1. c. 18. sec. 2. The Words of which are—"And not having afterwards gained a legal Settlement in such Parish." Which brings it to this Question, "Whether the *Master* had by any Act DISCHARGED the *Certificate* and gained a Settlement in the Parish into which he came by *Certificate*." And that depends upon the Act's relating to Certificate-men.

The first of these is 8 & 9 *W. 3. c.* 30. which (in § 1.) enacts that a Certificate-person shall not be removed till he actually becomes chargeable: Though as soon as he does become so, he may be removed to the Parish from whence he brought the Certificate.

Yet still it was thought reasonable that there should be some Cases and Circumstances excepted; under which, he might gain a Settlement in the Parish to which he came with a Certificate. And therefore 9 & 10 *W. 3. c.* 11. was made, intituled, "An Act for explaining an Act made in the last Session of Parliament, intituled, An Act for supplying some Defects in the Laws for the Relief of the
"Poor;"

“ Poor;” and reciting a Doubt, “ By what Acts any Person coming
 “ to reside within any Parish by Virtue of a Certificate may procure
 “ a legal Settlement in such Parish; and whether such Certificate
 “ did not amount to a Notice in Writing, in order to gain a Settle-
 “ ment.” (And it would have been a strange Thing if it had, when
 the Certificate was intended to prevent it;) It enacts that no Person
 or Persons whatsoever, who shall come into any Parish by any such
 Certificate, shall be adjudged, by any Act whatever, to have pro-
 cured a legal Settlement in such Parish, unless he or they shall really
 and *bonâ fide* take a Lease of a Tenement of the yearly Value of
 10*l.* or shall *execute some annual Office in such Parish, being legally*
placed in such Office.

The Question then upon this Act is, Whether it means an annual
 Office *within* the Parish; or an annual Office *in general*, he being
 resident in that Parish.

When this Case was spoken to before, I own I did think that it
 differed from the Cases of poor Persons at large; in whose Case,
 though they should be appointed in a Town at large (which may
 consist of several Parishes) the Appointment did not hinder the Re-
 moval: Whereas a Certificate-man could not be removed till he
 should become *actually* chargeable: So that there seemed to be a
 Difference in Point of Consequence to the Parishes. And therefore
 I thought that unless the Court was bound down by some Authority,
 it might deserve Consideration whether it ought not, in the Case of
 a Certificate-man, to be restrained to an Office *in* the Parish.

But the Case between the Parishes of *Garfington* and *The Holy*
Trinity does now appear to be the Case of a Certificate-man; and
 the Office was an annual Office at large; and the Certificate-man
 was not appointed to it *by the Parishioners*, but at the *Leet*: And the
 Court's putting it upon the Legality of the Appointment, makes it
 sufficiently clear that they did not doubt of the Office being *such as*
would intitle him to a Settlement within 9 & 10 W. 3. provided he
was legally placed in it.

Then consider the Cases on 3 & 4 W. & M. c. 11. which will
 be too strong for the Court to get over. The former Acts required
 Notice in Writing: But other Equivalents being thereby allowed,
 that Act says “ that if any Person, who shall come to inhabit in
 “ any Town or Parish, shall for himself and on his own Account
 “ execute any public annual Office or Charge in the said Town or
 “ Parish during one whole Year, he shall be adjudged and deemed
 “ to have a legal Settlement in the same, though no such Notice

" in Writing be delivered and published, as is thereby before required."

Now here the Words are "*Annual Office or Charge in the said Town or Parish.*" But the Current of Authorities is, that those Words were NOT confined to Offices *belonging to the Parish*, and to which the *Parish appointed*. And these Words in 9 & 10 W. 3. being the *same* as in that Act of 3 & 4 W. & M. the *Construction* must therefore be the *same*.

It is said indeed, that the former Act has the Word *Town*, (" in the said *Town or Parish* ;") which Word "*Town*" is not inserted in the latter Act. But I think that that Word makes no Difference at all : For it must mean such a *Town in which a Settlement can be gained* ; not a *Town at large*, consisting of a great many *Parishes*.

Therefore I am of opinion that the Master procured a legal Settlement in *St. Mary's* : And consequently the Apprentice gained a good Settlement there also.

Mr. J. PAGE.—The Case between the *Parishes of Garfington and The Holy Trinity* is in Point.

This Man was put in by the whole City. Therefore this *Parish of St. Mary*, which was a Part of the City, was interested, and had as good Notice as if he had been appointed by that particular *Parish*. And an Officer of a Hundred or of a City may be supposed to be a Man of better Substance and more considerable Figure, than an Officer of a single *Parish*.

Therefore I concur with my Lord, in Opinion.

Mr. J. PROBYN.—This Act of 9 & 10 W. 3. does make Certificate-men capable of gaining a Settlement in the *Parishes* to which they come by Certificate. And how to distinguish this from the Reason of the Case of *St. Mary's Reading* would be difficult. There the Man executed his Office in every one of the *Parishes* : So did this Man. And here, the whole City joining in the Choice, it should seem to follow, that this *Parish* concurred in it. But if not, yet he must be settled in *some* of the *Parishes* within the City : And that must be in the *Parish* where he lived. All these Laws have been made in favour of Settlements in the *Parish* where the Party *inhabits*. And therefore where a Man rents a Farm lying in *two* *Parishes*, he is settled according to the *Inhabitan- tancy*, not according to the Value.

Therefore he likewise concurred in the same Opinion, " that the "*Pauper* was settled in *St. Mary's*."

* V. Lucas's
Rep. (10 Mod.)
430. and Cases
of Settlements,
Ed. 1742, pa.
91.

Mr. J. LEE.—I think this a good Settlement in St. Mary's. These Acts have always been and ought to be taken favourably to the Persons endeavouring to gain Settlements; And it was so declared, in the Case of *Garfington v. The Holy Trinity*; and in the Case of *East Woodhay v. Burclear*, where the Certificate-man had married a Copyholder of Inheritance: And the Question was upon the Construction of this Act; which has stronger Words in *that* Particular, than in the present Case; because it is expressly declared that no Certificate-persons shall gain a Settlement by any other Act whatsoever except the *two* therein specified. And yet, though that Case was neither of the two, all the Court unanimously held "that a Settlement was gained by the Certificate-man; and that this Act was not to be considered as an explanatory Act, but as a * new Law." And that is true: For it *enlarges* the Certificate-man's Power of gaining a Settlement. For, now, if he executes such an Office *by Deputy*, he gains a Settlement: Whereas by 3 & 4 W. & M. he was to execute it for himself, and on his *own* Account.

The Case of St. Mary's Reading turned upon the same Point as the present; though it was on the former Act of Parliament.

As to the Difference of the Word "*Town*" being omitted in 9 & 10 W. 3. tho' added in 3 & 4 W. & M. Lord Hardwicke's Answer is a very full one: It must mean such Towns wherein Settlements can be gained. And the Words of this Act are very strong: For it does not say *Parish*-Office, but "some Annual Office in such Parish; and therefore it is not to be restrained, in the Case of a Certificate-man, more than in any *other* Case.

So that, I think, both the Words of the Act and the Cases which have been determined upon it are very strong; and that the executing this annual Office, *though not appointed by the Parish*, gained this Certificate-man a Settlement.

Per Cur. unanimously—

The ORDER of Sessions QUASHED.

The ORDER of the two Justices CONFIRMED:

V. Post, *Rex v. Inhabitants of Wingham*, M. 1743. *Rex v. Inhabitants of Fittleworth*, M. 1744. *Rex v. Inhabitants of Whitchurch*, P. 1754.

Rex

Rex v. The Inhabitants of Denham.

N^o 11.

TWO Justices removed *Edmund Walker* and *Elizabeth* his Wife from *Dalham* to *Denham*: And the Sessions, upon an Appeal, confirm the Order.

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The Order of Sessions states the Case specially. *Edmund Walker* hired a House and Farm of 10*l.* a Year and upwards in *Denham*, and lived therein from the Year 1725 to the Year 1730, and was rated and paid to the Poor's Rates of the said Parish: Afterwards, he hired another House and Farm in *Southwold Park*, of 150*l.* a Year, and lived there for several Years: But *Southwold Park* aforesaid is an EXTRA-PAROCHIAL Place, consisting of two Houses and about 300 Acres of Land only, belonging to and in the Occupation of different Persons, being in the whole of the Value of near 300*l.* a Year. And it does not appear that within the said extra-parochial Place there are or ever were any Persons appointed to receive or provide for the Poor happening therein. Upon deliberate hearing of Counsel on either Side, The Sessions do, under the Circumstances aforesaid, confirm the Order so made for Removal as aforesaid.

V. 2 Str. 1004,
S. C. Also
Sessions Cases,
Ed. 1750,
Vol. 2. pa.
250, N^o 171.
And Cases in
B. R. 7, 8, 9
and 10 G. 2.
pa. 163. (all
differently in-
titled.)

The Counsel who moved to quash these Orders (Mr. *Strange*) said, It was now established, "That a Person may be removed to an "extra-parochial Place, which may be looked upon as a Township "or Vill, and has more Houses than one;" and "that a Mandamus will lie, to appoint Overseers for an extra-parochial Place." To prove which, he cited the Case of **Dolting Stoke Lane* and *Brookham Lodge*, H. 11 Ann. and || *Rex v. The Inhabitants of Rufford*, P. 8 G.

* *V. Fortescue's*
Reports 219.
2 *Salk.* 486.
in the Margin.
And *Foley's*
Poor Laws, pa.
108.

Therefore the last legal Settlement of the Paupers was at *Southwold Park*; not at *Denham*.

On the contrary, It was argued (by Mr. *Abney* and Mr. *Filmer*) that the general Rule is, "that Persons cannot be sent to or from "extra-parochial Places." And there is no Inconvenience in this Doctrine: For as they are not to take other's Poor, so neither are others obliged to take theirs. Indeed if such extra-parochial Place be so populous as to be looked upon as a Town or Vill, that may make a great Difference.

|| *Str.* 512, and
8 *Mod.* 39.

In the Case of the Inhabitants of *Stoke Lane*, *Dolting*, and *Brookham Lodge*, the Pauper was sent to an extra-parochial Place, called *Brookham Lodge*: And the Order was quashed, because the extra-

parochial Place did *not* come under the Notion of a Township or Village.

* V. Sect. 21,
22.

The Act of 13 & 14 C. 2. c. 12. *extends to *all England*, if the extra-parochial Place *can* come under the Notion of a Township or Village; but *not otherwise*. A Place consisting only of *one House* certainly does *not*. It ought, at least, to consist of *several Houses*, to answer that Idea in any Degree.

In the Case of *Rex v. The Inhabitants of Belvoir*, M. 2 G. 2. B. R. there are *two Houses*, the Duke of Rutland's (*Belvoir Castle*) and an Ale-house: But there were not, nor ever had been, any Officers there. And the Order of Removal thither was quashed.

K. 1 Sir J. S.
512.

In the Case of *Rufford*, it appeared upon the Allegation in the *Mandamus*, and was admitted by the Return, "That it *was a Vill*," though insisted to be extra-parochial. And that Vill might consist of 500 Houses, possibly.

But *two Houses* only, are not sufficient to be considered as a Vill. And unless an extra-parochial Place be a Township or Village, it is not within 13 & 14 C. 2. c. 12. A Town or Village should, according to *Finch's Law*, contain ten Families. And by 1 Mod. 78. *Waldron's Case*, it appears that a Village is "a District that has a petty Constable over it." The Definition in *Co. Litt.* 115. is this—"Villa est ex pluribus Mansionibus vicinata, et collata ex pluribus Vicinis." This Place, therefore, having *only two Houses* in it, cannot be considered as a Township or Village.

The Counsel for quashing the Orders (Mr. *Strange* and Mr. *Lloyd*) replied, That extra-parochial Places may have Officers appointed for them by *Mandamus*.

In the Case of *Dolting* and *Stoke Lane* it was holden, "That there must be more Houses *than one*." It has been said; It was there holden "that there must be *several*." But more than one are several.

This present Case answers the Definition in *Co. Litt.*: It is a Vill consisting *ex pluribus Mansionibus & Vicinatis*: For it has *two Houses* and 300 Acres of Land belonging to and in the Occupation of different Persons.

If a Town be decayed, it is still a Town. And to prove that this shall be intended and taken to be a Vill, they cited *Greene v. Proude*, 1 Mod. 117. and *Addison v. Sir John Ottway*, 1 Mod. 251. If this be not a Vill, *what* is it? It must be *either a Vill, or Part of another Vill*: (For *Parish* is only an *Ecclesiastical Division*.) All
England

England is divided into *Vills*: And therefore this must be a Vill or Part of a Vill, or else no Part of *England*.

In the Case of *Belvoir*; there was a material Fault. For it was directed, "To the CHURCHWARDENS AND OVERSEERS of the Parish or Liberty of *Belvoir*: Whereas it was particularly stated "that "there WERE NONE." Besides, the Rule was made absolute without any Defence made against it.

LORD HARDWICKE. — This is a *new* Case: At least, it is so to me.

Before the Case of *Dolting and Stoke Lane*, it had been generally taken that there was no Power lodged in the Justices of Peace to send Paupers to *extra-parochial* Places where there were no Overseers of the Poor: But in *that* Case, all the Court held "that within 13 " & 14 C. 2. c. 12. the Court might oblige the Justices to appoint "Overseers, where the Place was *such* as might come under the "Notion of a *Village or Township*." Now that || Clause was plain- || Sect. 21. ly intended for Townships in the large northern Parishes only; (and that appears by the recital Part of the Act;) But in the enacting Part, the Words "Towns, Hamlets and Vills" are mentioned at large. Whereupon the Court did there construe the Equity of it to be, "that a Settlement might be gained in such Parishes at large;" WITHOUT confining it to those Parishes only which were particularized in the Recital. That alone was a very liberal Construction of the Act: But they thought it within the Mischiefs provided against by the Act; and reasonable. And I believe my Lord Chief Justice Parker's Words were, "That a Settlement might be gained in an "extra-parochial Place consisting of MORE Houses than ONE:" But then he went on—"So as to come under the NOTION of a Town or "Village." The Substance of the Opinion rested therefore upon this Limitation "of its amounting to the Notion of a Township or "Village."

Now this Place is called a *Park*; and described as *such*. It is certainly very hard to define exactly WHAT is a *Township* or a *Village*: It must be left to the Judgment of the Court, upon the Circumstances of the Case stated.

By the 43 *Eliz. c. 2.* there must, in every Place, be MORE Overseers than ONE. And when there are only two Houses in a Place, must the WHOLE Parish be perpetual Overseers? And in such a Case there is no Body over whom they are to have Jurisdiction, or any Body to chuse them, excepting themselves.

Now really this Place does not appear, to my Satisfaction, to be a Town or Village. In the Case of *Dolting and Stoke Lane*, the Or-

der was quashed because *Brookham Lodge* was holden by the Court not to be a Town or Village; notwithstanding that the *general Law* was there laid down as I have before mentioned. And here the Place does not, in my Opinion, come under the Notion of a Town or Village: And the Orders ought therefore to be affirmed.

Mr. J. PAGE held that a *single House, or two Houses, can not* amount to the Notion of a Town or Village. If the Place had *formerly* consisted of *more* than two; or had been a Town, and fallen to Decay; it ought to have been *so stated*. However, if the Houses were really and in Fact decayed and gone, it would then *cease* to be a Town or Village.

A Town or Village, in common Parlance, is an *aggregate Number* of Houses.

Therefore he concurred.

Mr. J. PROBYN was of the same Opinion.

The *least* Division known in the old Law is a *Tithing*; which consisted of *ten* Families. I should therefore think a *Vill* must consist of *at least* as much as a *Tithing*: It seems indeed to be something between a *Tithing* and a *Town*. Since there is no certain Definition of a *Vill*, why should we not fix it to the Number of a *Tithing, at least*?

The 13 & 14 C. 2. c. 12. was, I believe, intended for the *northern* Parishes: But it was at length construed to extend to *ALL* others in *England*, as coming under the same Equity and Reason.

The Limitation of the "more Houses than one," in the Case of *Dolting*, is—"So as to come under the Notion of a Township or Village." Now if there are but two Housekeepers, are these two People to choose *themselves*, and to be *perpetual* Overseers? I think *two* Houses are not within the Rule, "So as to come under the Notion of a Township or Village."

Mr. J. LEE was of the same Opinion.

It is now thoroughly settled, "That the Justices may appoint Overseers in extra-parochial Places." But it is upon the Principle and Foundation, "that the extra-parochial Place comes under the NOTION of a Village or Town." I think the Notion of a Village, according to the *ancient* Law, is a Tithing consisting of ten Families: According to the *modern* Notion, it is a Place that has a Civil Officer called a *Constable*. I think that it ought, at the least, to have the *Reputation* of a Vill or Town. But this Place is not stated to have had the *Reputation* of a Vill or Town; but only "to con-
" list

"fist of two Houses." Lord Coke's Definition of a *Ville*, "*ex pluribus Mansionibus vicinata*," must mean MORE than two Houses.

If they had applied for a *Mandamus* to appoint Overseers, the Question would have come properly before the Court upon the **Return*. But, upon the present Motion, it does not appear sufficiently to the Court to be *such* a Place as we can say is WITHIN the Statute of 13 & 14 C. 2. for the Paupers to be removed to as their last legal Settlement.

The Counsel for quashing the Order would have had this Case spoken to again. But

LORD HARDWICKE said, He did not see how it was possible, upon *this* State of the Case, that the Court could take this Place to be a *Township* or *Village*. He said he was satisfied that the Justices have done right: And it falls exactly within the Reason of the Case of *Belvoir Castle*.

Per Cur. unanimously—

The RULE was DISCHARGED; And
BOTH ORDERS AFFIRMED.

Rex v. Inhabitants of Bourn.

N^o 12.

TWO Justices made an Order for the Removal of *Henry Burnham* and his Wife from *Spalding* to *Bourn*: And, upon an Appeal, the Sessions confirmed it.

The Order of the two Justices had in its Margin the Words, "*Lincoln Holland*."

It was directed to the Churchwardens and Overseers of the Poor of the Parish of *Spalding* in the *Parts aforesaid*, and to the Churchwardens and Overseers of the Parish of *Bourn* in the County of *Lincoln*.

Whereas Complaint hath been made by you unto us, &c, being two of his Majesty's Justices of the Peace (*Quorum unus*) for the Parts *Holland* aforesaid, "That *H. B.* and his Wife have lately intruded themselves into your said Parish of *Spalding*, there to inhabit, &c, and are there become chargeable;" And whereas, upon due Examination and Inquiry made into the Premises, and upon the Oath of *Henry Burnham* taken before us,

* This did happen afterwards; in *M. 1740, 14 G. 2. B. R. Rex v. Inhabitants of Welbeck*, and in *Tr. 1763, 3 G. 3. B. R. Rex v. Showler and Atten.*

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V. Sessions Cases, Ed. 1750, Vol. 2. pa. 299. S.C.

it appears unto us, and we accordingly adjudge, that the said *H. B.* and his Wife are become *chargeable*; and that his last legal Place of Settlement was in the Parish of *Bourn*, by being an Apprentice in that Parish to one *John Lambert* a Glover: Therefore we do adjudge *Bourn* aforesaid to be the Place of their legal Settlement. These are therefore, &c.

The Order of Sessions recites this original Order of the two Justices; but, very erroneously recites that they had adjudged "that they were likely to become chargeable to the said Parish of *Spalding*."

On Saturday 26th of April, a Motion was made to quash these Orders; and a Rule was granted to shew Cause: And on Thursday the 8th of this Month it came on to be argued. Divers Exceptions were taken: Some, on the former Day; some, on the latter.

1st, There is no County either in the Body or Margin of this Order of the two Justices: It is only "*Lincoln Holland*," (not *Lincolnshire*.) Nor is the County at all named in the Body; nor has the Body any Reference to the Margin. In *Tr. 8 G. 1. Rex v. The Inhabitants of Sheringham*, an Exception was taken to an Order, "that the County was only in the Margin:" And it was holden to be a good Exception. So likewise in the Case of *Rex v. The Inhabitants of Underthwaite*, *H. 9 G. 1.* And in *M. 11 G. 1. Rex v. Austin*, the Case of *Rex v. Sheringham* was agreed to be good Law.

2d Exception.—The Complaint is said to be made by *You to Us*. Now the Act confines the Removal to be upon a Complaint to be made by the proper OFFICERS of the Parish aggrieved: A Complaint *ex officio* coming from any other Person is nothing. 2 *Salk.* 492. *Foley's Poor Laws* 84. 5 *Mod.* 149. and *Comberbach* 354. The Case of *Marlborough and Weston-Rivers*.

3d Exception.—It is not adjudged "that the Party is likely to become chargeable to the Parish complaining;" but only "that the Paupers are likely to become chargeable," generally. In *H. 11 G. 1.* between the Parishes of *St. Nicholas in Gloucester* and *St. Peter's in Bristol*, upon an Order for the Removal of *Mary White*, the reciting Part of it was, "Whereas the Pauper was likely to become chargeable to the Parish of *A*:" But in the adjudicating Part, they only said, "that she was likely to become chargeable," without adding the other Words "to the Parish of *A*." The Chief Justice held it bad for this Exception. And a Rule was made to shew Cause. [See *Sessions Cases*, Ed. 1750, Vol. 2. *pa.* 69, 70. *S.C.*]

4th Exception.

4th *Exception*.—The Settlement of this Man in *Bourn* is stated to have been acquired by his having *been* an “Apprentice to one *Lambert* a Glover in that Parish:” and *therefore* they adjudged *Bourn* to be the last legal Place of his Settlement. Now the *mere* having been an Apprentice is not sufficient to gain him a Settlement: They ought to have shewn that his Master was *not a certificate-man*, and that the Apprentice had *served him forty Days there*.

5th *Exception*.—The Order is misdirected; being “to the Churchwardens and Overseers of the Parish of *Bourn*,” not adding “of the Poor.” Now there is no such Officer as Overseer of a Parish: They are Overseers of the Poor of the Parish.

6th *Exception*.—The Justices describe themselves as Justices of the Peace &c, *Quorum unus*: which is *Latin*, and *not* a technical Term, (though *Quorum* alone, without the Addition of *unus*, is a technical Term.)

The Counsel, who spoke in Defence of the Orders, answered, 1st, The Commissioners of the Peace in *Lincolnshire* are distinct Commissioners for the *three Divisions* of that County, which are *Holland, Kesteven and Lindsey*: And the constant Manner of marking these different Districts in the Margin of Orders is not by the County (“*Lincolnshire*.”) but by the Division, as this is, “*Lincoln Holland*,” “*Lincoln Kesteven*,” “*Lincoln Lindsey*.” And the Court will take Notice of these Divisions of this County.

In Orders of Removal, the Reference made to the Margin in the Body of the Order is sufficient. To prove this, they cited the same Case of *Rex v. Sheringham*, which had been cited against them. For here it is so referred, in these Words, “the Parish of *Spalding* in the Parts aforesaid.”

2dly, The Word “*you*,” in this Order, must mean the Persons to whom it is directed: And they are the *Churchwardens and Overseers* of the Parish aggrieved.

3dly, The Complaint recited is, “that they were likely to become chargeable to *Spalding* :” And then the Justices (after having heard this Complaint, and examined into it upon Oath) adjudged them “likely to become chargeable,” in general. The Reference to the before recited Complaint renders it certain *where* they are likely to become so. *H. 5 G. 1.* between the Inhabitants of *Barholm and Witbam* in *Lincolnshire*.—This same Exception was taken and overruled. The Complaint was right. And the Adjudication was, “It appears to us, and we accordingly adjudge, That the said *J. S.* is likely to become chargeable,” but did not say to *what* Parish. The

Court said they would take it *according to the subject Matter*; and held that the Word "accordingly" referred the Adjudication to the Complaint, which did set forth "that he was likely to become chargeable to that particular Parish."

4thly, The Apprenticeship is only mentioned to shew the *Nature* of the Settlement which he gained in *Bourn*. It was not necessary to shew, exactly and circumstantially, *how* he gained it. *M. 11 Ann. Rex v. The Inhabitants of Crowland*.—The Pauper was adjudged to be last legally settled in St. *John Baptist's*, having served there one whole Year with one *J. D.* It was objected, "that it did not appear upon the Face of the Order, that he was *bired* for a Year." But the Court held that it was not necessary: For it shall be presumed. So here, As the Justices have adjudged that he gained a Settlement in *R.* by having been an Apprentice there, it shall be presumed that he served forty Days to a proper Master. [And they might have added the Case of *The King v. The Inhabitants of St. Mary Calendar's Winchester*, *M. 5 G. 1.* in Point. An Order of Removal was holden good, though it was not said "that the Apprentice had served forty Days, &c;" but only "that his last legal Settlement was in *M.* he having served as an Apprentice there."]

5thly, The Overseers of the Poor of the Parish are Overseers of the Parish. But the Churchwardens are also mentioned in the Direction, (which is "to the Churchwardens and Overseers of the Parish of *Spalding* in the Parts aforesaid.") And surely this Description is sufficient when joined with the Word Churchwardens, who are themselves Overseers of the Poor of their Parish.

6thly *Quorum unus* is a technical Term, as much as *Quorum* alone.

The Court were of Opinion that none of these Exceptions were of any Weight, and were sufficiently answered, except the Third: Upon which they had some Doubt; and therefore took Time to consider it and look into the Cases, to see if that Point had been already determined.

LORD HARDWICKE now delivered the Opinion of the Court.

The Exceptions which have been taken are of no material Weight, except the third.

As to the first—We must take the Words in the Margin (*Lincoln Holland*) to mean that *Lincoln* is the County of *Lincoln*, and *Holland* the *Division*: And the Court will take Notice of the Divisions of this County.

County. And the Body of the Order refers to the Parts aforesaid, and (in another Place) to the Parts of *Holland*. And the Reference to the Margin is sufficient in *Orders of Justices*. In the Case of *Rex v. Fosset*, P. 12 W. 3. B. R. the Court held that in Order of Justices, the County being in the Margin only, and the Place where, not being said to be in the County aforesaid, it would be ill for Want of such Reference: But the Opinion of the Court, in that Case, takes it for granted that an Order would be good with such a Reference to the Margin. I take it to be always so in *Orders*; and can find no Case to the contrary.

The Case of *Rex v. Austin*, M. 1724, does not warrant the Exception. That was an Order for suppressing an Ale-house. The County was only in the Margin, but is neither repeated nor referred to in the Body of the Order: Therefore that was certainly ill. The Case of *Rex v. The Inhabitants of Underthwaite* seems to be the same: Therefore that was also ill.

But there is no Authority where there has been a Reference to the Margin, and it has notwithstanding such Reference been holden ill. I believe the Apprehension that it would be ill, though there were such a Reference, has been grounded merely upon a Confusion arising from an imperfect taking of Cases where there was in Fact no Reference at all to the Margin. We all hold that it is well enough where there is such Reference.

But we think there is more Weight in the third Exception; viz. "That there is no sufficient Averment that the Pauper was likely to become chargeable to the Parish of Spalding, nor any Reference at all to the Complaint."

We hold that there must be either an express Adjudication, or a plain Reference; because it is the very Point upon which the Jurisdiction of the two Justices is founded and substantiated. Here the Complaint is very well: But the Adjudication is at large, there being no Words of Reference. It is only "that they are likely to be come chargeable." Now, this may be to their Relations or Parents, as well as to the Parish of Spalding: It has no particular Reference to the Parish of Spalding.

The Case between the Parishes of St. Nicholas in Gloucester and St. Peter in Bristol is similar to the present: "It appears to Us, and we do accordingly adjudge:" And yet, notwithstanding the Word "accordingly," the Order was quashed. The Case of *The King* against *The Inhabitants of Witham*, H. 5 G. 1. was not finally de-
*V. Sessions Cases, Ed. 1750, Vol. 2. N^o 73.

terminated by the Court, but was referred to the Judge of Assize [And so it appears by the Rule-Book *Die Jovis prox' post Octab' pur' beatæ Mariæ Virginis, Anno quinto Georgij Regis, Rex v. Inhabitant' de Wytbam super Montem.*]

There is no Case that I can meet with, upon the strictest Inquiry, where an Adjudication at large, without *some* Word of Reference to the Complaint, has been holden good.

BOTH ORDERS QUASHED.

Trinity Term

8 & 9 Geo. 2. 1735.

Nº 13.

Rex v. Inhabitants of Sandwich.

Thursday 12th
June 1735.

TWO Justices removed *Mary Paine* and her six Children from *Studland* to *Sandwich*: And, upon an Appeal, the Sessions confirmed their Order.

V. Sessions Cases, Ed. 1750, Vol. 2. pa. 245, Nº 166. S. C.

On *Monday* 19th of last *May* a Motion was made, by Mr. *Bingham* and Mr. *Gundry*, to quash these Orders.

The Case stated by the Order of Sessions was, That *John Paine* deceased, the Husband of the Woman and Father of the Children, was born at *Corfe Castle*; and after he came of Age, he rented a Tenement of 15*l.* a Year in *Sandwich* for a Year and upwards: And when his Lease and Time for which he took the said Tenement were expired, he left the same and went into the Parish of *Studland*, and took and rented a House within the said Parish of *Studland* at the yearly Rent of 30*s.* - And *after* he had lived in the said House about two Years, he took and rented a Tenement or Lands in *Langton* of the yearly Value of 12*l.* on which there was

no House; and occupied it two Years; and *inhabited in* and rented *also*, during all the Time, the said *House in Studland*. And the Sessions declare that the last Settlement of the Wife and Children depends upon the Settlement of the Husband, upon the Facts above stated in their Order.

In Support of the Motion, the Case between the Parishes of *North Nibley* and *Wotton Under Edge*, M. 1 G. 1. was cited; where it was determined "that two Tenements (though rented of different Persons) made a Settlement in the Parish where the Pauper lived." [v. *Foley's Poor Laws*, pa. 90.] They also cited the Case of *South Sidenham v. Lamerton*, 3 G. 1. where it was holden "that one entire Tenement of the Value of 10*l.* a Year gains a Settlement in the Parish where the House stands, though Part of the Lands lie in another Parish." [See *Foley's Poor Laws*, pa. 93. and *Sessions Cases*, Ed. 1750, Vol. 1. pa. 122. *Lucas* 388. and 1 Sir *John Strange* 57.]

They likewise cited the Case of *Rex v. The Inhabitants of Holli-bourne*, M. 1729, 3 G. 2. where the Pauper rented a House and Lands of 12*l.* 10*s.* *per Annum* Value; whereof the House and Land to the Value of 9*l.* 10*s.* *per Annum* lay in one Parish, and 3*l.* a Year of the Lands lay in another: And the Settlement was adjudged to be in *Elsted*, where the *House* was. [v. *Sessions Cases*, Ed. 1750, Vol. 2. pa. 159.] So in M. 10 Ann. *Regina v. The Inhabitants of Sedgeborough*, the Pauper inhabited a Cottage in one Parish, and Land of 11*l.* a Year in another: And it was holden that he gained a Settlement in *Sedgeborough*, where he inhabited the Cottage.

On the other Side, in Support of the Orders, Mr. *Hussey* (afterwards Serjeant *H.*) admitted that in the Case of *Humbleton* and *Sedgeborough* it was resolved to be *no* Settlement in the Parish where the Lands of 11*l.* *per Annum* lay; but doubted whether it went so far as to determine it to be a Settlement in the other Parish where the Cottage was. [See *Cases of Settlement*, pa. 5. N^o 8. and *Sessions Cases*, Ed. 1750, Vol. 1. pa. 36. N^o 38. and pa. 82. N^o 75. S. C.]

In the Case of *South Sidenham* and *Lamerton*, the Court made a Distinction between two different Contracts, and one entire Contract: And they held that taking two distinct Tenements in two different Parishes would not gain a Settlement in either, though both together should be of the Value of 10*l.* *per Annum*.

That

That was one *entire Contract*, and a Lease of *entire Tenement* lying in different Parishes: And it was upon *that* Ground that it was holden to gain a Settlement.

But *here* they are *two different Contracts*, and *two distinct Tenements*.

The Counsel for *Sandwich* (who had moved to quash the Orders) replied—That the Reason of a Settlement's being gained by renting 10*l.* a Year in Value, turns upon the *Ability* of the Person to rent Lands of such a *Value*, and his being of *Credit* enough to be intrusted with it.

LORD HARDWICKE.—I took it that this Matter had been very fully settled, “that whether the Taking was *distinct* or *entire*, or in *one* Parish or in *two*, it is the *same Thing*. Indeed the Words of the Act are—“*coming to settle as aforesaid in any Tenement under* “the yearly Value of ten Pounds.”

But the *Intention* of the Act is, that if a Person be of sufficient *Ability* to occupy a Farm or Tenement of the Value of 10*l.* a Year, it shall *exclude the Presumption* of his being likely to be chargeable to the Parish. And *this* is the Ground of these Resolutions. And the Court always *encourage* Settlements in Parishes where the Pauper has spent his Labour.

Therefore I think these Orders are ill.

Mr. J. PAGE concurred.—A Man is not a better Man for renting *one* 10*l.* *per Annum* than *two fives*: And he contributes to the Poor, for the whole Ten, somewhere or other. From the Nature of the Thing and the Reason of the Cases, a Man that is able to rent and does rent 10*l.* a Year shall be settled in the Parish where he lives.

Mr. J. PROBYN.—I remember it has been made a Question “whether two *distinct* Tenements taken at *different* Times, when “neither of them alone amounted to 10*l.* a Year in Value, should “make a Settlement.” But it has been settled since “that it “does.”

However, here the second Taking is a Taking of an *entire Tenement* of *above* 10*l.* a Year, on an *entire Contract* with *one* Person. And it has been long established, “that where a Person *living* in one Parish rents an *entire* tenement of *above* 10*l.* a Year in “that or in any other Parish, it gains him a Settlement in the Parish “where he lives.”

Mr. J. LEE.—I think my Brother *Probyn* has fully answered the Objection as to the *Entierty* of the Tenements. So that this Objection

Objection may be laid out of the Case. And then the *Reason* of the Cases upon this Head has constantly gone upon the *Sufficiency of a Person able* to rent a Tenement of such a *Value*. The Act of Parliament has not fixed it to be a Tenement in the *same* Parish. And the Man's *Ability* is the same, whether the Contract be with *one* Person or with *more*. This I take to be the constant Determination upon Cases of this Sort. However, as the last Taking was of an *entire* Tenement of *above* the Value of 10*l.* a Year, it stands free from the Objection raised by the Counsel who argued for the Orders, "that this is *not* an entire Contract."

Per Cur.

BOTH ORDERS QUASHED.

Rex v. Inhabitants of Eaton.

N^o 14.

TWO Justices removed *William Drackett* and *Ann* his Wife Saturday 14th
June 1735 from *North Wheatley* in *Nottinghamshire* to *Eaton* in the same County: And upon Appeal to the Sessions, they confirmed the Order of the two Justices.

The Case was specially stated in the Order of Sessions thus:— That about seven Years ago, the said *William Drackett* was hired as a Servant, to one *William Cocking* a settled Inhabitant in *Eaton*, for a Year, from *Martinmas* to *Martinmas*; and that, about the *Middle* of the Term, he *absented himself* from his Master's Service, *without his Consent*, for about *three Weeks together*; and then, upon the Demand of his said Master, he returned, and served out the Remainder of the Year with his said Master at *Eaton*. The Sessions being of Opinion that this Service gained a Settlement, therefore confirmed the original Order.

The Counsel who moved to quash these Orders (*Mr. Makepeace*) objected that this was *not a SERVICE for a Year*, pursuant to the Statute of 8 & 9 W. 3. c. 30. *sect. 4.* which makes "a Continuance" and *Abiding* in the same Service during the Space of one *whole* Year," to be as necessary as a Hiring for a Year. For, it is stated in the Order of Sessions, "that he *absented himself* for about *three Weeks* of that Time" without the Consent of his Master." And he did this without serving so much Time beyond the Expiration of the Year as to make the whole Time up a complete Year. He could not therefore under

such

such a Service gain a Settlement: And, consequently, the Orders are bad and ought to be quashed.

In Support of the Orders, it was answered (by Mr. *Abney*) That this Exception was over-ruled in the Case of *The King* against *The Inhabitants of Islip*, P. 7 G. 1. where one *Wilson* (whose Settlement was then in Dispute) absented himself from his Service *four* Days, without his Master's Consent; afterwards, he went to see his Friends for *three* Days more (but that was with the Consent of his Master;) and about *three* Days before the End of the Year, he went away to seek a new Service; all which amounted to ten Days Absence. And when he and his Master came to settle Accounts, the Master deducted out of his Wages a proportionable Sum of Money to the ten Day's Absence; which was a Circumstance that made that Case much stronger than this: And yet the Court held the Service in that Case to be a Service *within* the Meaning of 8 & 9 W. 3. And that the Party thereby gained a legal Settlement in *Islip*. [See this Case very well reported in Sir *John Strange's Reports*, Vol. 1. pa. 423.]

Per Cur.—This is a very good Order; the Absence of the Servant for the three Weeks being *purged* by the Master's *receiving him again*; which ought to be considered in this Case as a *Dispensation*: And in Strictness of Law, he still continued in the Service of the Master, notwithstanding such Absence. And besides, if we were to be over-nice in Services upon this Statute, it would be attended with very great Inconveniencies: For, a Servant would not be able to go for two or three Days to see his Friends without running the Risque of forfeiting his Settlement; which would be too hard.

The ORDERS were therefore AFFIRMED.

V. Post Rex v. Inhabitants of Oxleworth, P. 1751, and *Rex v. Inhabitants of Hanbury*, Trin. 1753; and see the 4th Part of my *Reports*, pa. 945, *Rex v. Inhabitants of Christchurch*.

Rex

Rex v. The Inhabitants of Barton Turfe.

N^o 15.

TWO Justices removed *Deborah Man* from *Happisburgh* to *Barton Turfe*: And upon Appeal, the Sessions confirmed that Order. Monday 23^d
June 1735.

The Case specially stated on the Order of Sessions was this—*Thomas Man*, who married *Deborah* the Daughter of *Francis Browne*, having then *Deborah* (the Person removed) his Daughter, of the Age of ten Years or thereabout, hired a Farm of the yearly Value of 100*l.* in *Barton Turfe*, which he occupied for about three Years; and died there; and was Overseer of the said Parish. After his Death, *Deborah* his Widow removed from *Barton Turfe* to *Happisburgh*, and dwelt there in a House and occupied Lands thereto belonging, of the yearly Value of 4*l.* which House and Lands were given to her by the Will of *Francis Browne* her Father: And *Deborah* her Daughter, being then of the Age of thirteen Years, went and lived there with her Mother as Part of her Family (there being then several other Sons and Children,) for about the Space of one Year and a half. The Sessions, upon due Consideration had of the Premises, adjudged that the said *Deborah* the Daughter did gain a legal Settlement in *Barton Turfe*, in Right of the said *Thomas Man* her Father who was legally settled there; and, having once gained a legal Settlement in *Barton Turfe*, could not afterward gain a subsequent legal Settlement in *Happisburgh*, in Right of the said *Deborah Man* her Mother, who had a legal Settlement there by dwelling in a House and occupying Lands of which the Inheritance was vested in her as aforesaid, by her going and living there with her said Mother as a Part of her Family in Manner aforesaid: And therefore they confirmed the Order of the two Justices.

V. Sessions Cases, Ed. 1750, Vol. 1. pa. 399, N^o 317. S. C.

On Wednesday 14th of May, in last Term, a Motion was made by Mr. Preston to quash these Orders; and a Rule to shew Cause was then granted.

On the second Day of this Term, Mr. Preston, in Support of the Motion, cited the Case between the Parish of St. George Southwark and St. Catharine's near the Tower, Mich. 1 G. 1. which was upon an Appeal from an Order of two Justices for removing *Lydia Cloyd*, *Elizabeth*, *Anne*, *Catharine*, *James* and *Samuel Cloyd*, from St. George's Southwark to St. Catharine's; and the Sessions confirmed it. The Order of Sessions stated the Case, That the said L. C. aged fix-

H

teen

teen Years, *E. C.* aged fourteen Years, *A. C.* aged ten Years, *C. C.* aged eight Years, *J. C.* aged four Years, and *S. C.* aged three Years, were the Sons and Daughters of *John Cloyd* and *Lydia Cloyd*; which said *John Cloyd* the Father, at the Time of his Death, was legally settled in the said Parish of *St. Catharine*, and there died; and that none of the said Children have by any Act of their own gained any Settlement different from the Settlement of their Father: But that after his Death, the said *Lydia Cloyd* his Widow and her said six Children went to dwell at the said Parish of *St. George Southwark*, where she took a House of 12*l.* a Year, and lived in the same above four Months, and paid the Queen's Tax, but never paid any Rent to her Landlord. The Sessions were of Opinion "that the said six Children, not having gained any legal Settlement themselves, are settled at the said Parish of *St. Catharine*, where their Father *John Cloyd* had his last legal Settlement, and gained no Settlement by their living in the said House with their Mother:" Therefore they dismissed the Appeal, and confirmed the Order of the two Justices. But this Court were of Opinion, "that the Children gained a Settlement in *St. George's Southwark*, their Mother's Parish." And, in the same Term, both Orders were quashed. [See this Case in 2 *L. Raym.* 1474. *Fortescue* 218. *Foley* 291.] They also cited the Case of *Rex v. The Inhabitants of Woodend*, *H. 13 G. 1.* which was upon an Appeal from an Order of two Justices made for the Removal of *Elizabeth Buncher* from *Paulspury* to *Woodend*; and the Sessions confirmed it. The Order of Sessions stated the Case, That *John Buncher* rented a House and some Closes at *Woodend*, about 30*l.* per Annum, and inhabited the said House for several Years, and died insolvent, and left a Widow and one Daughter, whose Name is *Elizabeth Buncher*. The Widow soon after removed to *Paulspury*, into a Messuage or Tenement of about 40*s.* per Annum Value and some Lands about 10*l.* a Year, that were her own Estate for Life, (both House and Lands being Copyhold;) and took her said Daughter with her, then about the Age of fourteen: And the Daughter lived with the Mother at *Paulspury* about two Years in the said Messuage or Tenement; but the Mother let the said Lands to a Tenant. The Sessions were of Opinion, "that the said *Elizabeth Buncher* was settled at *Woodend*, the Place of her Father's Settlement, and not at *Paulspury* where she lived with her said Mother as aforesaid:" And therefore they confirmed the Order of the two Justices. But this Court held "that the Daughter gained a Settlement in *Paulspury*, her Mother's Parish:" And, in the same Term,

Term, both these Orders were quashed. [K. 2 Lord Raym. 1473. S. C.]

The Counsel who argued in Support of the Order of Sessions in the present Case (Mr. Lloyd) urged, that it appears upon the Order that *Deborah* the Pauper was Daughter *in Law* to *Deborah* the Daughter of *F. Browne*, and not her *own* Daughter: For the Words are—"F. M. who married D. having *then* a Daughter." Now a Mother in Law is not bound to maintain the Children of her Husband by a former Wife, either by Nature or by Law: (2 Bulst. 345.) And therefore her Parish is not bound to do it.

But Mr. J. PROBYN and Mr. J. LEE held the Word "*then*" to refer to the Time of the *Hiring the Farm*: And they observed that the Fact is explained by the subsequent Expression "*her* Daughter."

Mr. Lloyd argued that, If it be *uncertain*, the Court will intend "that the Justices did *right*."

Mr. J. PROBYN persisted in his former Interpretation. And then, he said, the Case will be no more than this, "Whether a Widow removing with her Children to her *own* Estate, from whence she is *irremovable*, does or does not acquire a Settlement for her Children who remove with her as Part of her Family." And upon the Cases cited, it is clear that she *does*.

Mr. J. PAGE agreed to Mr. Justice PROBYN's Construction of the Words, as importing that *Deborah* the Pauper was *own* Daughter to *Deborah* the Widow.

Mr. J. LEE also concurred in it. But he observed that it appeared that the Daughter was then *ten* Years of Age: Which Circumstance raised some Doubt in him.

It is certain, he said, that a Settlement is gained *equally* in the Case of a Mother when the Father is dead, as in the Case of a Father, by a legitimate Child. But his Doubt was upon the Age of the Child; which was *ten or more*, when the Mother went into the Parish of *Happisburgh*: Whereas in the Cases cited, the Age of the Children was under seven Years. He said, He did not put it upon the Foot of Nurture; but doubted whether a Child acquires a new Settlement *after that Age*, by going with the Mother to the Place of her Settlement.

Mr. J. PROBYN.—It appears, upon the Order of Sessions, that this Child had not acquired any Settlement of her *own*. She must follow therefore the Settlement either of her Father or Mother. Now in all those Cases that have been mentioned, the Child had the

same Settlement under the Father as the Child had. And this Order (as now returned) prevents us from surmising that she gained any Settlement of her own. Indeed if the Child be under seven Years of Age, it must go with the Mother for Nurture; But that was not the present Case.

Mr. J. PAGE.—I think the *age* makes no Difference. Indeed on Account of Nurture, a Child under seven must go with its Mother: But it remains settled at the Father's Parish, and maintainable by that Parish. But where the Mother goes to an Estate of her own, from which she is irremovable, a Child may, after the Father's Death, gain a Settlement under the Mother as well as it could under the Father.

Mr. J. LEE.—I always took it that in Cases of legitimate Children, the first Thing to be inquired into was the Settlement of the Father: If that can not be found, then indeed the Child's Settlement must follow the Mother's. But this being a *derivative* Settlement from the Father; and the Child being of *so advanced an Age*, I should think it ought not to be broken into and transferred to that of the Mother, unless it appeared that the Daughter had acquired a Settlement of her own: I should be glad to look into it.

It was ordered to stand over.

ADJOURNED.

It now came on again.

LORD HARDWICKE said, He did not know any such Difference between one Kind of Settlement and another: The Father and Mother's Settlement is just the *same* Case. In the Case that has been cited between the Parishes of *Paulspury* and *Woodend*, the Child was thirteen or fourteen Years of Age. I think the Orders must be quashed.

Mr. J. LEE.—I never apprehended any Difference between the Case of the Father and the Mother; for, that is the *very same*, where a Settlement is to be gained: But I thought that if the Child was of *sufficient Age* to gain a Settlement, it might have been necessary that it should appear upon the Order "that no subsequent one had been gained by such Child."

In the Case between the Parishes of *St. George Southwark* and *St. Catharine* near the Tower, it is stated "that the Child had not gained any subsequent Settlement." But in the Case of *Paulspury v. Woodend*, it was not so stated, nor any Thing one Way or the other. I had a Notion that it had been held necessary "that this should appear;" and upon looking into my Notes, I find that it was so in *Trin.*

12 *Ann.* between the Parishes of *Woburn* and *Woking*; where two Children, the one *twelve* the other *eight* Years old, were sent to the Father's Place of Settlement as the Place of *their* last legal Settlement. An Exception was taken "that the Children appearing to be of these Ages, their Father's Settlement did not necessarily give them a Settlement in the same Place." And Lord Chief Justice *Parker* laid it down "that where Children are under seven Years of Age, the Father's Settlement is their Settlement: But if they are *above* seven, then the Law supposes that they may have gained a Settlement for themselves, UNLESS the contrary appears; and shall not therefore be taken for granted to be settled with the Father." So that it seems such Children *above* seven Years old must be taken to have gained a subsequent Settlement for themselves, unless the contrary appears. [*V. Cases of Settlement*, pa. 17, N^o 24. S. C. accord: But in *Foley*, pa. 315, S. C. is reported much less strong.]

And in the Case between the Parishes of *Edgworth* and *Harrow*, in Queen *Anne's* Time, *Parker* Ch. J. held, "that the Settlement of Children was gained not by Inheritance, but by their being irremovable." [*V. S. C. in Foley's Poor Laws*, pa. 294.]

But the Case of *Paulspury* and *Woodend* is directly contrary to the Case of *Woburn*, and is exactly the same Case with the present: For there the Child was fourteen Years of Age; and it is *not* there stated "that she had gained no other Settlement."

Therefore (though I have no Note of that Case) I am not for setting the Question at large again.

LORD HARDWICKE.—I believe, in the Case of *Harrow* and *Edgware*, it was said that there should be negative Words "that they had gained no other Settlement." But it is going a great Way to presume a Settlement when none appears: And it is here sufficiently stated to be the Place of the legal Settlement of the Child.

Mr. J. PROBYN.—The derivative Settlement of a Child from his Father is what he has a Right to by Inheritance.

LORD HARDWICKE.—If we go into *Presumptions*, upon special Orders, it will make them very uncertain. The latter Resolutions are to be followed.

BOTH ORDERS QUASHED.

Rex

N^o 16.

Rex v. The Inhabitants of Dilwyn.

Wednesday
25th June
1735.

TWO Justices removed *William Smith, Mary his Wife, William, John, Mary and Anne* their Children, All under seven Years of Age, from *Dilwyn* to *Leominster*.

Upon an Appeal, the Order of Sessions states, That upon Examination of *William Smith* the Father, upon Oath, it appeared that about four Years since he rented a Tenement and Lands, for a Year, in *Leominster*, at 40*l.* That he lived in it one Year, and paid his Rent. That the next Year, he rented another Farm of 80*l.* a Year in the *same* Parish, and continued in that Farm for one whole Year. The Year following, the said *William Smith* agreed for a Farm in the Parish of *Eardisland*, to hold from *Candlemas*, at 44*l.* yearly Rent; and in the Month of *April* following, he sowed about fifteen Acres of the Land with Grain; and in *May* following he came to live on the said Farm, and inhabited there about three Weeks; and then the greatest Part of his Stock of Cattle was seized and driven away, for Rent due to his former Landlord: Whereupon the said *Smith* then came to a new Agreement with his Landlord in *Eardisland*, and agreed to quit that Farm and to pay the said Landlord 8*l.* for Satisfaction, and to continue in the Farm-house and Garden, and to have a small Parcel of Pasture with it at the Rent of 3*l.* 10*s.* to be paid at the *Candlemas* following. That at the Harvest after, his Landlord seized upon the fifteen Acres of Grain. The Pauper finding himself thus distressed, about *Michaelmas* before the Expiration of his Term in *Eardisland*, rented a House, Garden, and the Aftermath of a Meadow in *Dilwyn*, to hold from that Time to *May* following, and agreed to pay 5*l.* for the House and Garden, and 15*s.* for the Grass of the Meadow. That he entered with his Family, and continued there according to his Agreement, but paid no Taxes or executed any Office in *Dilwyn*. Upon the whole, the Sessions discharged the said Order of the two Justices.

On *Saturday* the 7th of *June* 1735 a Motion was made by Mr. *Philips*, to quash the Order of Sessions; because the Settlement in *Leominster* was undoubtedly good; and the Pauper appeared to have gained no new Settlement since: For the Residence under the 44*l.* a Year Lease in *Eardisland* was less than forty Days; and there can be no Pretence of his gaining a Settlement in *Dilwyn*.

A Rule

A Rule was then made to shew Cause: And Cause was now attempted to be shewn by Serjeant *Birch* and Mr. *Abney*.

LORD HARDWICKE said there was *no Inhabitancy for forty Days in Eardisland* under the Lease of 44*l. per Annum*; and therefore there can be no Settlement gained under it: And the next Agreement with his Landlord in *Eardisland* was quite a separate Contract, and can not be tacked to the former. It did not take Effect till the other was finished.

Per Cur.—

The ORDER of SESSIONS QUASHED: And
The ORIGINAL ORDER AFFIRMED.

Rex v. Inhabitants of St. Mary White-Chapel. N^o 17.

TWO Justices made an Order for the Removal of *Charles Couklin* from *Mile-End New-Town* to St. Mary White-Chapel: *Wednesday 25th June 1735.*
And upon an Appeal, the Sessions confirmed that Order.

The Sessions state the following Case—That the Pauper had gained a legal Settlement in St. Mary White-Chapel. That having a *Leasehold of 5*l. per Annum* Value in Mile-End New-Town*, for the Term of *fifty Years*, for which he paid only *6*d. per Annum** reserved Rent, he went and *lived there upon it*, and was a *Housekeeper twenty-five Years*, and then *sold the Remainder* of his Term and all his interest therein for *32*l.** And upon Debate, a Question arising “Whether the said *Charles Couklin*, by his having such Leasehold Messuage in *Mile-End New-Town* for such Term of Years and of such yearly Value as aforesaid, and by his living in the same Hamlet in such Leasehold Messuage, and by his being a Housekeeper there in the same for twenty-five Years as aforesaid, obtained a legal Settlement in *Mile-End New-Town*, or not:” The Sessions held that he did *not*: But they held St. Mary White-Chapel to be his Place of last legal Settlement; it not appearing that he had since gained any other legal Settlement.

On *Saturday 17th May* last, a Motion was made to quash these Orders: For that the Pauper had plainly obtained a legal Settlement in *Mile-End New-Town*.

Upon shewing Cause against quashing them, on *Tuesday 17th Instant (June)*, the Counsel for *Mile-End New-Town* observed that the Pauper had *sold all his Interest in Mile-End New-Town before* he

he was removed: After which Sale, they argued that he was removable from thence. And they cited the Case of *Rex v. The Inhabitants of Sabridgeworth*, H. 3 G. 2. as a Case in Point.

The Court all seemed to be strongly of Opinion, that the Settlement was in *Mile-End*; and that the Selling it made no Difference. However, in Order to look into the Case of *Sabridgeworth*, the present Case was adjourned.

Upon its coming on again, this Day, it appeared that that Case was thus stated.—*Edward Sheppard* the Pauper was born at *Sabridgeworth*: And his Father being seised in Fee of a Copyhold Cottage in *Albury*, which used to be let at 25s. *per Annum*, did, about a Year and a half before the Removal, surrender the said Copyhold Cottage to his said Son *Edward Sheppard* and his Heirs; who was admitted to the same to him and his Heirs, in the Lifetime of his said Father, upon his said Surrender. Immediately upon such Admission of the said *Edward Sheppard* the Son, he went into and dwelt in the said Copyhold Cottage for about one Year and a half; and then sold the same for 14l. 2s. 6d. being the full Value thereof. Upon this State of the Case, the Sessions declared their Opinion, “that the said *Edward Sheppard* the Son gained no Settlement in *Aldbury*,” and therefore confirmed the Order of the two Justices which had removed him from thence to *Sabridgeworth*. Mr. *Lee* moved to quash both those Orders; for that this Estate in *Aldbury* was the Pauper’s own, by a Surrender from his Father: And there was no Difference between a Surrender from a Father, and a Descent. But the Court denied the Motion, without so much as making a Rule to shew Cause. For, they not only thought that the Surrender looked fraudulent; but, besides, they took Notice that the Surrender was *since* the late Act of Parliament of 9 G. 1. c. 7. which fixes the Purchase-Money at 30l. The Intent of which Act they held to be that the Purchaser should be a Person able to pay so much. [*V. Sessions Cases*, Ed. 1750, Vol. 2. pa. 161, S. C.]

The Counsel for *Mile-End New-Town* supposed this cited Case to be similar to the present; because the Pauper had, in both Cases, sold his Interest before the Order of Removal.

But LORD HARDWICKE thought this Case of *Sabridgeworth* not at all to the Purpose; because the Surrender to the Pauper was there made after the Act of Parliament of 9 G. 1. c. 7. by the 5th Section of which, it is enacted “that no Person shall gain a Set-
I “ment

tlement "by Virtue of any Purchase whereof the Consideration
"doth not amount to thirty Pounds, for any longer or further Time
"than such Person shall inhabit in such Estate; and shall then be
"liable to be removed." And that was only of the Value of 14*l.*
2*s.* 6*d.*

The Court held this to be a very plain Case: And

BOTH ORDERS WERE QUASHED.

Rex v. Inhabitants of Tedford.

N^o 18.

TWO Justices removed Francis Gill, Elizabeth Gill his Wife, Wednesday 22d June 1735.
and Elizabeth, Dorothy and William Gill their Children, from V. S. C. in 2 Str. 1014, (extremely short;) and in Sessions Cases, Ed. 1750, Vol. 2. pa. 237, N^o 164.
Waddingham to Tedford: Upon Appeal, the Sessions confirmed the
Order of the two Justices. The Appeal was received, and adjourn-
ed to Michaelmas Sessions; and a Case in the mean Time ordered to
be made for the Judge of Assize, on 9 G. 1. c. 7. sect. 5. viz.—
That Francis Gill was settled at Tedford; and contracted with John
Atkinson for a House and Curtilage in Waddingham for 39*l.* which
was conveyed to Gill and his Heirs accordingly, in Consideration of
39*l.* Gill paid 9*l.* and Isaac Bristol paid the remaining 30*l.* to At-
kinson, by Gill's Order. The Conveyance was dated 2 May 1730;
but was not executed till the 19th of May 1730. Upon 18 June
1730, Gill mortgaged the Premises to the said Isaac Bristol, by de-
mise for one thousand Years, under a Proviso to be void on Pay-
ment of the Money in a Year. Gill continued in Possession about
four Years after the Mortgage: Then Bristol entered, by Virtue of
the said Mortgage and a Release of the Equity of Redemption.
Then the Inhabitants of Waddingham procured Gill, being out of
Possession, to be removed to Tedford. The Order of Sessions re-
cites that, Whereas the Judges of Assize had not Time to hear and
determine it; and whereas the Parties agreed this Case to be the true
State of the Case; and then it proceeds thus—Now upon hearing
Counsel and further Evidence on both Sides, this Court doth declare
and adjudge "that the Purchase made by Gill was fraudulent; and
"that the Settlement of Francis Gill his Wife and Children was at
"Tedford: But the Parishioners of Tedford are no Way concerned
"in the said Fraud."

A Motion having been made to quash these Orders, and a Rule

to shew Cause obtained thereupon, it came on to be argued, upon *Thursday* the 1st of *May* 1735.

The Counsel for *Tedford* took Exceptions, first to the Form of the Order of the two Justices; which runs thus—" *Lincolnshire Lindsey* To wit. To the Churchwardens and Overseers of the " Poor of the Parish of *Waddingham* in the Parts aforesaid." Now, *Non constat* what are " the Parts aforesaid:" And the Court will not take judicial Notice what they are; and *Waddingham* may be in another County.

2d Exception to the Order of the two Justices.—The Complaint is that " *Francis Gill* and *Elizabeth* his Wife, *Elizabeth*, *Dorothy* " and *William Gill* their Children, *has* lately intruded themselves " into the Parish of *Waddingham*:" And then they adjudge that *Tedford* is the legal Settlement, (not saying the last legal Place of Settlement.)

As to the Merits.—It is a Case out of the Act of Parliament of 9 G. 1. c. 7. sect. 5. And the Justices, in their Adjudication, depart from their Premises: For, the Act does not extend to any Case where the Consideration exceeds 30*l.* But here the Consideration is above 30*l.* and is therefore out of the Act. And the Consideration appears to have been *bona fide* paid by *Gill*; Part by himself, and Part by his Order, (though by the Hands of *Bristol*.) It does not even appear that *Bristol* had lent it him: Therefore it shall be taken that it was *Gill's* own Money.

It is not stated for how much Money the Mortgage was made, nor upon what Consideration. And the Pauper continued in Possession and enjoyed the House four Years after it was mortgaged.

No Circumstances of Fraud are stated: And therefore if this Conclusion of the Justices at Sessions be drawn from the Premises stated, it is a Conclusion contrary both to the Law and to the Fact; and the Court will themselves judge of it, and set it right.

The Counsel for the Orders answered, That " *Lincolnshire Lindsey*," is the constant Form: And so it is always, where Counties are divided into separate Divisions. And the Court will take Notice of this: And so they also will, that *Waddingham*, being in that Division of the County, is within that County.

2dly, " *Has*" is sufficient in the Complaint: But, however, the Adjudication is right.

As to the Merits.—Whether the Sum paid as Consideration-Money was greater or less, if there be *Fraud*, it poisons the whole. If this is not to be considered as a Purchase under 30*l.* *bona fide* paid, such

such a Construction would destroy the End and Intent of the Act of Parliament. The Justices are the proper Judges of Fraud; and they have adjudged "that it was a fraudulent Purchase." And it appears upon the Face of the Case, as stated for the Judge of Assize, "that it was so." But that is not all: They are not confined to this State of the Facts. For they heard *further Evidence* on both Sides, before they adjudged the Purchase to be fraudulent.

LORD HARDWICKE.—It must be further Evidence of the *same Fact*: For the State of the Case made for the Judge of Assize was before agreed between the Parties to be the *true State* of it.

There is no great Weight in the Exceptions to the Form. That of the *County is the constant Form: The *others* are only to * *V. ante*, No 12, S. P. settled.

As to the Merits.—It is a new Case. There seem to be two Questions: (1st,) Whether this be a Case *within* the Act of 9 G. 1. c. 7: (2dly,) If it be not, then, Whether this Purchase so far *appears* to be a Fraud, as that the Justices had Authority, *without* any Aid from this Act of Parliament, *to adjudge it fraudulent*, and that no Settlement was gained under it.

1st, It does *not* appear to me to be within this Act. The Act says that "none shall gain a Settlement by Virtue of any Purchase, whereof the Consideration doth *not amount* to the Sum of 30*l.* *bonâ fide* paid, for any longer Time than he shall inhabit in such Estate." So that it is *confined* to Purchases *under* 30*l.* *bonâ fide paid*. Consequently, if the Vendor *had* such Consideration of 30*l.* *bonâ fide paid to him*, it is *not* within this Act. Now in the present Case, the Consideration was 39*l.* and *was bonâ fide* paid to the Vendor. And it would be pretty hard, to say that the Justices had a Power upon this Act to inquire "whether the Purchaser borrowed the Money or not." It is a common Case, to borrow Money to make Purchases: Nothing is more frequent than to borrow a Sum to make up the Price.

2dly, Whether, *without* the Aid of this Act, the Justices have Authority to consider this as a colourable *fraudulent* Purchase contrived and executed in Order to give this *Francis Gill* a Settlement in *Waddingham*.

I think they might do this in Case of a Purchase, as well as in Case of gaining a Settlement by renting 10*l.* *per Annum*, provided that the Fraud sufficiently appears: Because the *Fraud infects the whole*, and makes it *no Purchase*. But then the next Question is, Whether the Fraud sufficiently Appears in the present Case.

• V. 1 Stra.
85, accord.

It was said "that the Justices are the proper Judges of Fraud." But *Fraud* is a Fact which must be *found*. It must be so by a Jury upon a special Verdict: (For, in that Case, it is not sufficient to find *Premises only*, without drawing any Conclusion.) The Justices are Judges of the Fact: And they may judge of the Fraud arising from the Facts: But we are Judges of the *Law* upon the Facts, though not of the Facts themselves*. If they had *generally* found the *Fraud*, we might have been *bound* by such a *general Finding*: But when they *state* the Facts particularly, the Matter is as much open for *our* Determination upon it, as it was for *theirs*. Here, the Facts are particularly stated: So that *we can* determine upon them, as well as *they* could.

The residing four Years in this House, (which is one of the Facts stated) is, to me, a very material Circumstance in this Case: And it is expressly stated that "the Parishioners of the Parish of *Tedford* were no Way concerned in the Fraud."

It has been urged "that there might be *other* Facts upon which the Justices might adjudge the Fraud:" Because the Adjudication is said to be "upon hearing further Evidence." And, indeed, if the Words "upon hearing further Evidence" were to be taken for Evidence of other *new* Facts, we could not control their Determination: But it is much more natural to suppose the further Evidence to have been of the *same* Facts; because the Facts were *before* agreed.

The Justices are only to consider concerning Frauds which *regard the Parish* (in Order to gain a Settlement in it.) They are not to inquire concerning Fraud *between the Parties*: That would make them a Court of *Chancery*. Mr. *Bristol* is not stated to have been even a *Parishioner of Tedford*: And the Finding "that the Parishioners of *Tedford* were no Way concerned in the Fraud," excludes all Presumption that they *were* so.

The Facts stated in this Order do not, in my Opinion, warrant the Conclusion of the Justices.

Mr. J. PAGE.—This Case does *not* seem to me to be within the Act of 9 G. 1.

But, *without the Aid* of that Act, the Justices have a Right to inquire into the Fraud. I remember a Case (I was of Counsel in it) of *St. Giles's in Cambridge*.—The Pauper bought a Cottage there, and came thither to settle: And from thence he was removed, by an Order of two Justices. Upon this, the Man brought an Action of Assault and Battery for removing him. It was tried before Lord Chief Justice *Holt*: And it was insisted "that an Action would not lie; be-
" cause

"cause it was a fraudulent Purchase, and so no Settlement." It appeared that the Man was not worth 1 s. but had borrowed the whole Purchase-Money of a Gentleman who had an Estate in the Town. *Holt* held "that the Justices had a *Right to inquire* into Purchases of that Kind; and had a *Right to remove*, if they found them *fraudulent*." And the Plaintiff was non-suited. Yet there the Seller was no Party to the Fraud.

Here is no Sign of Fraud, in the present Case, between the Parties interested: And it is expressly stated "that the Parish of *Tedford* was not concerned in any." Besides, it is frequent for Persons to purchase without having so much ready Money as the *whole* Purchase amounts to. Therefore *this Circumstance alone* can be no Evidence of Fraud, in the present Case.

I must take the Justices to have stated *all* the Facts. For, otherwise, it could not be the *true* State of the Case: Which it is *agreed* to be. Indeed, if the Justices had not stated the Case, we could not have looked into it: But *where the Facts appear to us*, we are to judge of the *Fraud*. And, for my Part, I do *not* see that this amounts to a Fraud.

Mr. J. PROBYN.—The Question is, Whether this be an Order stating a *complete* special Case for the Opinion of this Court; or, Whether what appears to us was only a *Part* of the Case, which Part only they referred to the Opinion of the Judge of Assize, reserving the Consideration of the full and whole Case to themselves.

They say that that Case stated to the Judge of Assize was "agreed to be the *true* State of the Case:" That is, *so far* as it was stated to him. The Judge did not meddle with it. The further Consideration of it had been reserved to themselves: And when it came back, they heard *further Evidence* on both Sides. The only Fraud that the Justices could take Notice of was *such* a Fraud as would *affect the Parish* in which the Settlement was to be gained by the Purchase.

I own, I think that *as far as the Case is stated* there does *not* appear any Fraud: And the rather, since the Man continued four Years in Possession after he had mortgaged it. And it is expressly stated "that the *Parish of Tedford* had no Concern in any Fraud." The Order does not mention the Consideration of the Mortgage or of the Release: So that we can judge nothing from thence.

But my Doubt is, Whether this can be considered as a complete special Order fully stated for the Judgment of this Court, as the Sessions

sions only consulted the Judge of Assize upon a *Part* of the State of the Case; and as the further Evidence seems to go to *new* Facts; (for they had *no* Need to hear *further* Evidence upon Facts *agreed* on by both Sides.) If the further Evidence went to new Facts, then the Justices were Judges of the Facts that appeared before *them*: Of which, *we* can not inquire or determine, so as to take it out of their Hands into our own.

Mr. J. LEE.—If this State thus agreed to be true be not the *whole* of the Case, there will not indeed be a sufficient Reason for quashing the Order. In general, where a Case is specially stated, *that* Case is taken to contain the *full* Reasons of the Determination made by the Sessions: And therefore if the Court hold those Reasons to be ill, they will quash the Order of Sessions.

I should rather incline to think that this State of the present Case contains the *whole* of the Case: It appears to be *agreed by Counsel on both Sides* to be the *true* State of the Case. It was referred to the Judge of Assize: Who did not meddle with it. When it came back to the Sessions, there might be *other* Justices present than were present at the former Sessions; who might not take it on the Concession of the Counsel, but might desire to enter, themselves, into the Examination of the Matter.

If this State of the Case contains the *whole* of the Facts, then the Adjudication of the Sessions signifies nothing, if *we* are of Opinion that the Facts are *not sufficient to warrant* their Conclusions: For *we* are to draw a Conclusion from the Facts, when we have them fully before us.

The Subject of the Act of Parliament is only the *Payment* of the Consideration-Money. If there be an *actual Payment* of 30*l.* *bond fide*, it is not within the Act. Now here is 39*l.* *bond fide* paid.

I can *not* see that this is a fraudulent Purchase, with Regard to the Settlement. The constant Determination has been, "that when a Person comes to live in a Tenement of his *own*, though under 40*s.* *per Annum*, Free, Copy or Leasehold, he is irremovable." Now this Man appears to have paid 9*l.* himself: And it does not appear that the Remainder was borrowed. And the Man lived four Years in it. It does not at all appear what was advanced to him upon the Mortgage. Therefore this Man was irremovable after forty Days Continuance at *Tedford*: And consequently he was settled there.

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The most natural Meaning of the Words of the Order is, "that this State, agreed to be the true one, contains the *whole* Case." And if it does, then it is a bad Order.

The Court were unanimous, That *if* this State of the Case be taken to be the *whole* State of the Facts, then the Order is bad.

LORD HARDWICKE.—It would be pretty hard to say that these Words "further Evidence (whether inserted by the Clerk of the Peace of Course, or by Order of Justices) should *destroy* the Case before stated. There is no certain Form of submitting the Case, by the Sessions, to the Judgment of this Court; nor any Occasion to do it at all. If this Reference to the Judge of Assize was only of a *Part* of the Case, it was an *impertinent* Reference. The Sessions might hear further Evidence; and yet *no further Fact* might appear to them: *If there had*, it is probable they would have *stated* it.

Mr. J. PROBYN.—The Sessions do not always refer the whole Case to the Judge of Assize: Sometimes they refer only a particular Point, and reserve the final Determination of the whole Matter to themselves. The Sessions might therefore hear further Evidence concerning the *Fraud*; though they could have *no Kind of Occasion* to hear further Evidence to the *Facts agreed to be truly stated*.

The Court took some Time to consider.

And now—

LORD HARDWICKE said, The Question upon the *Merits* was, "Whether it sufficiently appeared, upon the Facts stated, that this was a *fraudulent* Settlement?" We thought it did *not*. But then the Question was, "Whether the *whole Fact* appeared to us;" because the Sessions adjudge the Purchase to be fraudulent, upon hearing *further Evidence*.

I own I thought the *whole Case* was *sufficiently* before us: Otherwise, the Justices must have done a very *impertinent* Thing in representing this to be the *true* State of the Case. It could not be a true State of the Case, if they heard further Evidence to *new Facts*. I dare say that (if the Truth was known) that further Evidence was only of what passed before the Judge of Assize to whom it had been referred.

Mr. J. PAGE and Mr. J. LEE held the same Opinion as before: And Mr. J. PAGE called it blowing hot and cold, unless the Case stated as the *true* one was taken to be *whole* State of the Facts.

BOTH ORDERS WERE QUASHED.

Michaelmas

Michaelmas Term

9 Geo. 2. 1735.

N^o 19.

Rex v. The Inhabitants of Oulton.

Friday 7th
Nov. 1735.

See a slight
Account of S.
C. in *Sessions*
Cases, Ed.
1750, Vol. 2.
pa. 296, N^o
479.

TWO Justices made an Order for the Removal of *Francis Ailmer* under the Age of ten Years, *Rachael Ailmer* under the Age of eight, and *John Ailmer* under the Age of five Years, from *Wells* next the Sea to *Oulton*: And upon Appeal the Sessions confirmed that Order.

Case.—*John Ailmer* their Father was settled in *Oulton*; and the Children were born there: Their Mother had a Copyhold Messuage and Lands in *Burnham Overy* in her Husband's Life-time; and after her Husband's Death removed thither with her said three Children, and dwelt in the said House, and dwelt and continued there with them three Months and upwards; and then sold the said House and Lands.

N. B. This special Case was not stated upon the Order of Sessions; which did not state any Case at all, but only affirmed the original Order of the two Justices generally, "upon hearing all that was" and could be alledged and said by Counsel and Witnesses on both Sides, and full Debate of the Matter." Whereupon the Counsel for *Oulton* excepted, at the Sessions, to their refusing to state the Case specially: And the Exceptions were returned up together with the Orders; and are as follow.

"Whereupon immediately, sitting the Court, *J. Jermy Esq;*
"and *J. Howes Esq;* of Counsel with the Inhabitants of *Oulton*
"aforesaid, delivered into Court their Exceptions, in Writing under their Hands, to the above written Order of Court: Which
said

" said Exceptions were then read and received by the Court, and
 " are hereunto annexed."

" We humbly except to the Judgment given by this Court,
 " That, &c. as erroneous: For that the said Order of two Ju-
 " stices ought to have been discharged; because it was proved, &c.
 " —And we having desired the Court to find the Matter specially,
 " and the Court having denied so to do, we therefore humbly except
 " &c. as erroneous; for that the said Order of two Justices ought
 " to have been discharged; for that the said three Children removed
 " gained a legal Settlement in *Burnham Overy*, in Right of their
 " Mother's having the said Messuage and Lands in *Burnham Overy*
 " aforesaid, and inhabiting in the said House, and the Children re-
 " moved also dwelling in the said House with their Mother three
 " Months, and then the Mother sold the said House and Lands."

J. Jermy. J. Howes.

This was under-written—" Read and received in Court 25 July
 " 1734:" And signed by the Clerk of the Peace.

Berney.

On Tuesday 29th of April 1735, a Motion was made to quash this Order of Sessions confirming the Order of two Justices, together with the said Original Order: For that the Mother's going to settle upon her own Copyhold in *Burnham Overy* gained a Settlement there for her Children as well as for herself. So, in the Case between the Parishes of *Paulspury* and *Woodend*, in M. and H. 13 G. 1. B. R. A. had a Wife and Child and lived fourteen Years in *Woodend*; and then died: The Wife and Child, after the Death of the Father, went to *Paulspury* into the Wife's own Copyhold House, and lived two Years there.—The Court agreed that the Mother gained a Settlement at *Paulspury* as well for her Child as for herself. So likewise in the Case between the Parishes of *St. George Southwark* and *St. Catharine* near the Tower, in M. 1 G. 1. the Father being settled in *St. Catharine's*, and having a Wife and six Children, died: After the Death of the Father, the Widow and her six Children went to live in *St. George's Southwark*, and lived there four Months in a rented Tenement of 12l. per Annum.—The Court held that the Mother gained a Settlement as well for her Children as for herself.

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At the Time of this Motion, the Order of Sessions was not in Court. On *Thursday* 1st May 1735, it was produced.

LORD HARDWICKE.—To what Purpose should we make a Rule to shew Cause why this Order of Sessions should not be quashed? For, I do not see that we can ever make such a Rule *absolute*; because this that is alledged to have been the real State of the Case, *does not appear to us* to be the Fact. And how can we take it for granted, that it was the real Fact? To be sure, it is a Thing very much to be censured and discommended, when an inferior Jurisdiction endeavours to *preclude* the Parties from an Opportunity of *applying to a superior Jurisdiction*. But still we must go according to the due Course of Law.

Mr. J. PAGE.—I never knew an Instance that this Court could *force* the Justices, against their Will, to *state a special Case*.

Mr. J. LEE.—This alledged Case, supposing it to be the Truth, is directly contrary to the Determination of that of *St. George's Southwark*. Therefore I very much incline to come at it, if I can.

THE COURT hinted to the Counsel who moved to quash the Order of Sessions, that they might look narrowly into the Order, to see if they could find any Defects in *Form*: And in that View, it was at present adjourned.

The Day following, the Counsel for quashing the Order moved for a Rule to shew Cause why the Return should not be amended; and the State of the Case inserted by the Clerk of the Peace in the Body of the Order of Sessions.

The Court gave him a Rule to shew Cause.

On *Thursday* the 12th of *June*, Cause was shewn against this Method of putting the State of the Case in the Body of the Order: And the Counsel for *Wells* said, "the Clerk of the Peace is doubtful whether he *can* do it, against the Will of the Justices at Sessions."

LORD HARDWICKE.—Here is plainly a *Determination contrary to Law*. The Right Way would be, either "that it should go back to the Sessions," or "that it should be referred to a Judge of Assize."

However, at present, a Rule was made upon the Clerk of the Peace, and upon the Parish of *Wells*, for them to shew Cause why the Return should not be amended, as above.

On the last Day of *Trinity* Term 1735, 8 & 9 G. 2. the Counsel for quashing the Order moved to make the above Rule absolute.—
To which

The

The Counsel for the Clerk of the Peace had no Objection, if the Court thought that he might do it. But, the Rule to shew Cause appearing to have been before enlarged, nothing was taken by the present Motion: But the Rule stood enlarged to the next Term.

On Friday 7th November 1735, the Counsel for the Parish of Wells argued that the Return is perfect and complete: It wants no Amendment, nor can receive any. The Justices have *executed* their Authority: They *can not resume* it again. These Exceptions are only the *Allegations of Counsel*; and no Part of the Order. The Clerk of the Peace has no Authority to insert this Case.

LORD HARDWICKE.—I do not see what it is possible for the Court to do in this Case, *without Consent*. Here is *no Consent*: So far from it, that, on the contrary, the Parish concerned in Interest *opposes* it.

Here is an Order of Removal made by two Justices; an Appeal therefrom; and a *general* Order, on that Appeal, for Confirmation of the Order of the two Justices: The Counsel at the Sessions except to the Order of Sessions in the Words of a Bill of Exceptions; and state the Fact. If the Fact be true, the *Ground* of the Exceptions is *right*: For it has been* often holden in this Court, “that * *v. ante*, N^o 15.
“ a Child, after the Death of the Father, may gain a Settlement
“ under the *Mother*, as well as it might before under the Father.”

But the Exceptions set forth, “that the Court of Sessions *refused* “ to state the Matter specially.” How then shall we do this that is now desired of us, *without their Consent*, even though the Clerk of the Peace should consent? It *does not appear* to us, “that the Fact “ alledged is true.” It is *only the Allegation of Counsel*: Or perhaps there might be Evidence given of it, and the Sessions *might not believe* the Evidence.

This is *not* in the *Form* of a Bill of Exceptions, though it be in the *Words* of one. || If a Bill of Exceptions will lie, there is then || But see N^o 24, a Resolution “that it will not.”
a proper Method to come at the Right and Justice of the Matter. The Court have ordered Amendments in Point of Form: But *what* is *now* prayed, is an Amendment in Point of *Substance*, *contrary* to the Opinion of the Court below.

Mr. J. PAGE.—The Consequence of this Amendment would be, to bring the Fact only alledged by Counsel at Sessions, into this Court to be determined here. I do not know that ever this Court inquires into the Facts upon which Justices have determined: And they themselves have stated none; but have adjudged *generally*. This would be, to bring the Facts to be examined

here; which do not appear to have been admitted as the Facts by the Sessions, though they are alledged by the Counsel. The Sessions might not perhaps agree this to be the Fact, notwithstanding the Opinion and Allegation of the Counsel.

Mr. J. PROBYN.—This Court can take no Notice of any Thing but the Order. I remember a like Case in the last Year of the late King, where the original Examinations were returned up with the Order: But the Court said they could take Notice of nothing but what was contained in the *Body* of the Order. The present Case is *less* strong: For this is only the Allegation of Counsel; there, the original Examinations were returned up hither.

Mr. J. LEE.—The Court were in Hopes of a *Consent*, when they made this Rule. But as it is *opposed*, instead of being consented to, there is nothing clearer than that we *can not grant* this Motion; which amounts, in Effect, to a Rule upon the Sessions to *oblige* them to *state the Facts specially*: Which would be going very much out of the Way. If there be any Method for that (as I have heard it said "*that there is,*") it must be by Way of a Bill of Ex-
 * *Sed v. Post,*
 N° 24. ceptions *: And there is a proper Writ to oblige the Justices to set their Seals to it, in case they refuse to do so.

Per Cur.

The last mentioned RULE was DISCHARGED.

Afterwards, on Saturday 7th February following, upon Mr. Denison's Motion, a Rule was made to confirm the Orders, unless Cause should be shewn, to the contrary, before the last Day of the Term; two Terms being elapsed since they came in, and nothing done upon them.

N° 20.

Rex v. The Inhabitants of Castlechurch.

V. 2 Strange
 1022, S. C.

TWO Justices made an Order for removing the Pauper from Syford in Staffordshire to Castlechurch: And upon Appeal, the Sessions confirmed that Order.

Case.—The Pauper was hired for a Year to W. B. in Castlechurch; and came to live with his Master there, on the 7th of January 1733, and continued with him till the Day after Christmasday following; and then went away, by his Master's Consent; and took his Clothes with him, and received his whole Year's Wages. The Sessions held

held this a good Hiring and Service for a Year; and confirmed the Order of the two Justices.

To this Order an Exception was taken, as not being within 8 & 9 W. 3. c. 30. which expressly requires a *continuance* in the Service during the Space of one *whole Year*; and which is an explanatory Act.

In the Case of *Burnham* and **Pawlet*, P. 1 G. 1. the Master and * *V. Foley* Servant parted by Consent, three Weeks before the End of the Term; 206, the Case of *Pawlett* and *Burnham* and *Burnham* Wages for that Time: of *Pawlett* and *Burnham* Parish. This was holden to be *no Settlement*.

In the Case of *Rex v. The Inhabitants of Godalming*, H. 12 G. 1. the Servant stayed till about a Week before the End of the Year, and then went away by Consent, and received his whole Year's Wages: It was argued three Times; and holden to be *no Settlement*.

In the Case of *Rex v. The Inhabitants of Preston*, H. 4 G. 2. the Servant received 2*l.* 2*s.* from two of the Parishioners of *Ampney*, to leave the Service of his Master five or six Days before his Time. And there, though Fraud was objected; yet the Court said they could not take Notice of it, not being found: But they thought it *no Settlement* in *Ampney*.

The Consent of the Master cannot affect a *third* Person (as the *Parish* is) though it may determine his *own* Contract.

A Rule was made to shew Cause why the Orders should not be quashed.

On *Wednesday* 25th *June* 1735, Cause was shewn: And the Case of *Rex v. Inhabitants of Eaton*, in last Term, was cited †.

LORD HARDWICKE.—The Act of 8 & 9 W. 3. c. 30. is † *V. ante*, N^o 14. an *explanatory* Law; and therefore, according to the general Rule, is *not to be extended by Construction*: For the Legislature having thereby made a Construction themselves of a former Act, there would be no End of Constructions, if we were to make Constructions upon Constructions. Now it requires expressly a *Continuance* in the Service for a *whole Year*. How then can we abate it?

In the Case of || *Rex v. Inhabitants of Eaton*, the Servant went || *Ante*, N^o 14. in the *Middle* of his Service to see a sick Relation; and returned to his Master again, upon the Master's Demand: And the Court took it to be an Absence *by Licence*; because the Master's subsequent Assent was tantamount to a Licence. But this is so much *cut off from the End* of the Year. Indeed it was Holyday-time (if that can make any Difference.)

The

* *V. Ante*,
pa. 48.

The Counsel for the Orders mentioned the Case of *Rex v. Inhabitants of Islip*, P. 7 G. 1.* where the Servant failed of his Service thirteen Days; six whereof when he was sick; four Days in the Middle absent without Leave, and three at the *End*, contrary to the Will of the Master; and there was an Abatement of Wages for the last three Days Absence at the *End* of the Year: And yet it was holden a good Settlement.

On this last Day of *Trinity* Term 1735, the Rule was enlarged.

On *Monday* 10th *November* 1735, it came on again.

LORD HARDWICKE asked the Counsel for the Orders, If they had any Case of a Settlement being holden good, where the Servant *never returned* to his Master after his absenting himself, and yet such Service had been holden to be a Service *within this Statute*. There is a great Deal of Difference, he said, between the two Cases: For, where the Servant returns and the *Master receives him*, it is always esteemed a *Dispensation* in the Master, and *helps* the Discontinuance, and works in the Nature of a *Remitter*.

To this they answered—That in the Case of *Islip*, the Servant absented himself the three *last* Days of the Service; and that too *against* the Consent of the Master, who deducted 6*d.* for such three Days Absence; and the Servant *never returned*: And yet it was holden a good Settlement.

In the Cases of *Ivinghoe* and *Solebay*, P. 4 G. 1. [*v. Foley* 157; *Fortescue* 317; *Cases of Settlements*, pa. 83, N^o 109;] *Pepper Harrow* and *Frencham*, M. 1 G. 1. [*v. Foley* 144; *Lucas* 293; *Fortescue* 322; *Cases of Settlement*, pa. 58, N^o 80;] *Rex v. West Horsley*, T. 8 G. 1. [*Foley* 209; *Fortescue* 216;] and *Horton* and *Houghton*, P. 3 G. 1. [*Lucas* 392; *Cases of Settlements*, pa. 80, N^o 104;] the Interruptions in Point of Time had no Weight with the Court: But the Services were holden to be good.

On the other Side, it was urged by the Counsel for *Castlechurch*, that neither the Letter or Intention of the Act of 8 & 9 *W.* 3. had been complied with; because it plainly appears upon the Face of the Order, that both the Contract and Service determined *within* the Year. The four Cases last cited, they said, turned upon the particular Contract between the Master and Servant: None of them come up to the present Case; nor do they seem to be relied on, as applicable to the present Question. The Case of *Islip* is the only Case the other Side seem to rely on. But that Case differs from this: For it was in that Case holden by Lord Chief Justice *Pratt*, “that where
2 “ the

“ the Master plainly intimates that he intends to part with his Servant at the End of the Year, it was but reasonable the Servant should look out for another Service.” And in some Countries, where Servants are customarily hired at Statute-Fairs, it may be necessary for the Servant, if the Master will not give him Leave for that Purpose, to go the Statute-place *without* his Leave to seek out for himself; though he should absent himself from his Service, on that Occasion, three or four Days before the Expiration of the Year.

To carry the Consent of Masters in these Cases so very far as is attempted, would really establish the Mischief under the 4 & 5 W. & M. which the 8 & 9 W. 3. was designed to remedy. For the Master may consent to the Absence of the Servant so far, that there may be only forty Days of real Service left.

LORD HARDWICKE.—Unless the Court be bound by the Cases already adjudged, I should think that this is *not* a good Settlement.

By 8 & 9 W. 3. which is an explanatory and declaratory Law, with negative Words, it is enacted* “that no such Persons so hired * *V. Sect. 4.* as aforesaid shall gain a Settlement without *continuing* in the same Service during a *whole* Year.” And we ought to take Care that we do not carry the Equity of Construction so far as to overturn the Meaning and Intention of the Act. It is a Rule with Respect to explanatory Acts, not to carry equitable Constructions too far, and beyond what the Words will justify.

The Legislature has in this Act expressly determined the Time of the Service: They require that it shall “continue during the Space of one *whole* Year.”

In the Cases cited, it does appear that the Contract was determined. But, in this Case, the Facts are stated so as that, upon the whole, the Contract was determined, and the Pauper ceased to be a Servant to the Master. If so, he could not be said to *continue* in the Service during the twelve Days mentioned in the Order: And consequently, it was *not* a Service for a whole Year.

The Case of *Islip* is not an Authority in the present Case; because there was no Determination of the Contract; it being stated in the Order “that the Master refused to give the Servant Leave to go to the Statute; and that the Servant declared he would serve out his Year, and refused to allow for the last three Days.” And the Reason given by Lord Ch. Just. *Pratt* for the Opinion in that Case, is a very good Reason*; and shews that the Contract was *not* dissolved before the End of the Year, and that the Departure of the ^{* *V. 1 Stra.*} 424.
Servant

Servant to seek out a new Service was *not* in the Servant a *De-
sertion of his Service.*

Fraud infects every Thing in these Cases: But where there ap-
pears no Fraud, We *can not intend* it. If there be any Fraud in
this Case, it seems to be in the Master, in paying the Servant his
Wages even for his Absence.

Too great a Latitude in these Cases may be very dangerous; be-
cause there will be no knowing where to stop.

I think, upon the whole, that this is *no* good Settlement; and
that the Orders ought to be quashed.

The Reasons upon which the Court has gone, in the Cases cited,
are not inconsistent with either the Letter or Intent of the Act of
Parliament; because there the Contract subsisted, no Act having been
done to determine it.

Mr. J. PAGE was of the same Opinion.

Mr. J. PROBYN was also of the same Opinion. The *Consent*
of the Master and Servant can't alter the express Law.

The Case of *Islip* is not at all in Point. There, the Contract
was not dissolved before the End of the Year.

Mr. J. LEE.—This is a very clear Case. It appears, the
Servant went from his Service before the Year was out, and that the
Master consented to it: Which is a plain *Determination of the Ser-
vice within the Year.* No Fraud appears in the Case: The paying
the Wages for the Time of the Servant's Absence might be an Act
of Benevolence in the Master.

The Case of *Islip* differs from this Case; because there was *no* De-
termination of the Service within the Year.

Per Cur.

BOTH ORDERS QUASHED.

V. Post, N^o . Rex v. Inhabitants of Hanbury, Tr. 26 & 27
G. 2. (Thursday 28th June 1753.)

Rex

Rex v. The Inhabitants of Sarratt.

N^o 21.

TWO Justices made an Order for the Removal of *Ezekiel* Friday 28th Nov. 1735.
Lofty his Wife and Son from *Sarratt* to *Bovington*: But upon Appeal to the Sessions, the Order was quashed. V. 2 Stra. 1023. S. C.

The Case stated upon the Order of Sessions was this.—*Ezekiel Lofty*, being settled at *Bovington*, marries, and goes to *Sarratt*, and there hired and lived in a House of 7*l.* 10*s.* *per Annum*; where a Poores Rate was made for the Relief of the Poor of *Sarratt*; which Rate was signed by one Churchwarden and three Parishioners, and afterwards by one Justice only. The *Landlord* of the House, who never occupied it, was *charged* in this Rate: But the *Tenant* paid it. Another Rate was afterwards made, which was signed by the Parishioners; but not allowed by any Justice of Peace: And the *Landlord* was charged, but the *Tenant* paid, as before. Both Payments were made *by the Tenant*, upon the *Demand* of the *Overseers* of the Poor of *Sarratt*. The two Justices held the Man's Settlement to be at *Bovington*: But the Sessions quashed their Order; supposing that he had acquired a Settlement at *Sarratt*.

On *Thursday* the 20th of this Month of *November* 1735, a Motion was made, by *Mr. Coningsby*, to quash the Order of Sessions; for that the Payment by the *Tenant* of this Poor Rate, which was *not charged upon him* but upon his *Landlord*, could not gain the *Tenant* a Settlement. So that the Question was “Whether, if a “*Poores Rate* CHARGED upon the *Landlord*, and PAID by the *Tenant*, “this shall acquire a Settlement to the *Tenant*.”

LORD HARDWICKE.—The *Charging* is the *principal Act*; as it infers Notice to the Parish: But *both* are necessary.

Mr. J. LEE.—*Both* the Charge upon the *Tenant*, and Payment by him, are necessary, to gain him a Settlement.

Mr. J. PAGE seemed also to think that the *Tenant* must be *charged*, as well as pay, in Order to acquire a Settlement.

Rule to shew Cause.

On its coming on, this Day,

The Exception taken to the Order of Sessions, being repeated, “that the *Tenant* was never *charged*; whereas the Act of 3 & 4 *W. & M. c. 11. sect. 6.* requires both a *Charge* and *Payment*.”

L

The

The Counsel for *Bovington* urged, That two Justices had before made an Order, on 24th *April* 1734, to remove these Paupers to *Bovington*; and *Bovington* had appealed to the Sessions: And their *Appeal* was allowed, because the Inhabitants of *Sarratt* did not produce the Order; and the Inhabitants of *Sarratt* were ordered to pay Costs. Notwithstanding which Order of Sessions, afterwards, on the 18th *July* 1734, two Justices removed the Pauper to the same Place: Which they had no Power to do, being precluded by the *Allowance of the Appeal*.

LORD HARDWICKE.—This is no Objection to the present Order of Sessions being quashed, upon the Merits. For though the * Rule is “that where the Sessions, upon an Appeal, confirm an Or-
 * See the 4th Part of my Re-
 ports, pa. 354,
 355, *Rex v.*
Inhabitants of
Bentley, accord.
 “der of two Justices, it is final upon the Parish charged, as to all
 “Parishes whatsoever; but when they discharge the Order of two
 “Justices, it only binds as between the two contending Parishes,”
 yet the Order of Sessions now before us is not within that Rule. For this Order only allows the Appeal: And an *Allowance of the Appeal* is no quashing of the Order of the two Justices. The Sessions only declare that the Appeal was proper, and then give Costs against the Parish of *Sarratt* for not producing the Order: But there is no Judgment of the Sessions one Way or the other. Afterwards there is another Order made by two Justices, and an Appeal from it: And the Merits are, by Consent, adjourned to a subsequent Sessions.

We must therefore take it upon the Case returned: And it seems to me to be a very plain Case. The Counsel for the Order of Sessions give no Answer to the Exception taken to it upon the Merits.

The Act requires both a Charge and Payment: And here is only a Payment without a Charge.

I think the Charging is the principal Thing: For that is the Act of the Parish. It may be, that they would not charge him for Fear of making him a Parishioner. However they have charged the Landlord.

If the Hand that pays the Rate were to make any Difference, that would put it in the Power of the Officer who receives the Rate to charge the Parish, by receiving it from a Person never charged with it.

Per Cur.—

The ORDER of SESSIONS was QUASHED: And
 The Original ORDER of the two Justices AFFIRMED.

See the 4th Part of my Reports, pa. 621, *Rex v. Inhabitants of Painswick*; where the Rate was—“Thomas Clifford, or Tenant.”

Hilary

Hilary Term

9 Geo. 2. 1735.

Rex v. The Inhabitants of Bramley.

N^o 22.

TWO Justices removed *John Close* with his Wife and Children from *Armley* to *Bramley*: Which Order of Removal was confirmed at the Sessions.

Thursday 12th
Feb. 1735.

The Order of Sessions specially states, that after his Settlement at *Bramley*, he removed with his said Family, and inhabited and farmed Lands at *Armley* aforesaid; for which, he was charged and paid two Quarterly Payments to the LAND-Tax only. The Sessions therefore confirmed the said Order of Removal.

V. Sessions Cases, Ed. 1750,
Vol. 2. pa.
246, N^o 167.
S. C.

On Tuesday 18th of November 1735, a Motion was made, to quash these Orders. And to prove "that it was a good Settlement in *Armley*," the Cases between the Parishes of **Oakhampton* and **Kenton*, P. 7 G. 2. (where a Tide-waiter was holden to gain a Settlement by paying the Land-Tax;) and a Case between *Foston* and *Dalbury* Parishes, or *Blood's Case*, *Comberb.* 410. (where *Holt* said "that Payment of the Land-Tax had been holden a sufficient Notice;") were cited: And a Rule was made to shew Cause.

* V. ante,
N^o 3.

The Counsel who shewed Cause against quashing the Orders argued, that though the Tenant did pay the Land-Tax to the Collectors; yet as the Land-Tax is always allowed or repaid by the Landlord, that Payment could gain no Settlement to the Tenant. And here he paid only two Quarters, not the whole Year's Tax: Whereas the Land-Tax is an entire Tax for the whole Year.

That Saying of *Holt's*, in *Comberbach* 410. is only an obiter Saying: It was not the Point then in Question.

In Answer to this, it was said, The allowing the Money back again by the Landlord is no Objection: For, in the cited Case of the

Tide-waiter, (*The King against The Inhabitants of Oakhampton*) the Money was repaid to him by the Collector of the Customs.

LORD HARDWICKE.—The Act of 3 & 4 W. & M. c. 11. *sect.* 6. does not require a Payment for a *whole* Year: The Payment of his *Share* is sufficient; though it be not for the whole Year. It is all that the Statute requires: Which is “paying *his Share towards the public Taxes or Levies* of the Parish.” He might not perhaps reside in the Parish during any one whole Year; but in *Part* only of two distinct Years.

The great Doubt has been “Whether the Legislature did not mean PAROCHIAL Taxes.” But this has been long gotten over; and the *Land-Tax* has been holden to be within the Act, from the *Notice* of Inhabitaney that arises by the Party’s being *assessed and paying* it.

Per Cur.—

*The RULE must be made ABSOLUTE;
And the ORDERS QUASHED.*

BOTH ORDERS QUASHED.

See the Cases referred to at the Bottom of *pa.* 6. determined agreeably to this Case.

N^o 23.

Rex v. The Inhabitants of Mansfield.

The same
Day.

TWO Justices made an Order for the Removal of *Frances Swift* and *Frances* her Daughter about four Years old, *Elizabeth* her Daughter about two Years and a half old, and *Catbarine* her Daughter about half a Year old, from *Brampton* in the County of *Derby* to *Mansfield* in the County of *Nottingham*; reciting that it appeared to the Justices, upon Oath of the said *Frances Swift* taken in Writing, “That her Husband *Godfrey Swift* was legally settled in the Parish of *Mansfield* in the County of *Nottingham*.” And the Sessions, upon an Appeal, confirmed this Order.

A Motion was made on *Tuesday* the 3d of this Month, to quash these Orders; because there is *no Adjudication* “that *Mansfield* was the last legal Settlement of the *Children* or of their *Mother*.” And a Rule was made to shew Cause.

The Counsel who now shewed Cause observed, that it *does not appear* that she is a *Widow*: And it is to be presumed that the Husband

band is *alive*. And, if so, the Settlement of his Wife and Children must follow *his* Settlement.

In Answer to this, it was said, the Children are not said to be the Children of *him*, but only of *her*.

Cur.—They are not removed as *his* Children; nor she as *his* Wife.

The ORDERS must be QUASHED.

Easter Term

9 Geo. 2. 1736.

Rex v. The Inhabitants of Preston upon the Hill. N^o 24.

TWO Justices made an Order for the Removal of *Mary, Martha* and *John*, the Children of *Thomas Harrison* deceased, from the Township of *Daresbury* to *Preston upon the Hill*: And upon Appeal to the Sessions, they confirmed the said Order, generally; not caring to state any special Case in their Order.

A Motion was made on *Saturday 7th June 1735*, to quash these Orders: Which came before the Court upon a BILL OF EXCEPTIONS containing a special State of the Case, as follows—

Wednesday 26 May 1736.
V. S. C. in Sir *John Strange* 1040, and *Sessions Cases*, Ed. 1750, Vol. 2. pa. 254, N^o 172.

Exceptions to the Judgment of the Court of Quarter-Sessions, on the Confirmation of the above Order.

On the Evidence of all the Witnesses, it appeared that *Thomas Harrison*, the Father of the Children, about twenty-two Years ago was licensed by the Ordinary of the Diocese of *Chester* to be School-master of the Free Grammar-school of *Daresbury*, and at the same Time became Clerk of the parochial Chapel of *Daresbury*, and officiated in both Capacities from that Time to the Time of his Death, which

which happened in *April* last; and for fourteen or fifteen Years of the latter Part of the time, *resided in the said Township of Daresbury*; (though it did not appear in Evidence, *how* he was nominated or appointed, or that he was *licensed* to the Clerk's Place:) And it appeared that the Children had gained no Settlement for themselves. Whereupon the Court was of Opinion, "That the said *Thomas Harrison* gained no Settlement thereby in *Daresbury*:" which the Inhabitants of *Preston on the Hill* humbly EXCEPT TO, and pray they may be *received*. And accordingly the said EXCEPTIONS were RECEIVED and ordered to be *filed* by the Court: And thereupon Sir C. D. Bart. and J. M. Esq; two of the said Justices, at the Request of the Inhabitants of *Preston on the Hill*, SEALED this Bill, sitting the Court aforesaid, the 16th Day of *July* in the eighth Year of his present Majesty's Reign, at *Nantwich* aforesaid.

Upon this Motion, a Rule was made to shew Cause. And upon shewing Cause, the single Question was, "Whether a Bill of * *V. ante*, N^o 19. "Exceptions* would lie, in this Case, to the Court of Quarter-Sessions." It was argued on *Monday* 17th *November* last: When Lord *Hardwicke* thought it a Matter of such Consequence, that he proposed having it set down in the Paper for further Argument; which was accordingly done. And now (upon the second Argument) the Court delivered their Opinion: In which Opinion, the Arguments of the Counsel at the Bar are so fully discussed, that I have chosen to omit them, to avoid being thought too tedious.

LORD HARDWICKE.—This is a Case of great Consequence: And there may be very great Inconveniences on either Side.

It has been much wished that a Bill of Exceptions would lie to the Justices at their Sessions; because otherwise it may sometimes happen that they may determine in an arbitrary Manner, contrary to the Resolutions of the Courts of Law: For if the Justices *will not* state the Facts specially (though requested to do so) when the Matter is *doubtful*, this is a very blameable Conduct in them; and it is to be wished that it might be avoided.

On the other Hand, there may be very great Inconveniences arising from the *Abuse* of Bills of Exceptions: And this Matter of the Settlement of the Poor, which ought to be rendered cheap and speedy, may by such Means be rendered dilatory, expensive and burthenome.

I have

I have heard that the Money spent about determining these Settlements would go a great Way towards the Maintenance of the Poor: And this Method would greatly *increase* the Expence, were it to be put in Practice in every Case where any Party thought fit to ask and insist upon it.

In Order therefore to come to the proper Determination of this Point, we must consider it on the Statute of *Westm. 2. c. 31.* and the Authorities and Resolutions upon that Statute.

There has been no determined Case that warrants the Court to say that a Bill of Exceptions will lie in the present Case. If a Bill of Exceptions would lie, I do not see but this Bill is proper enough, as to the *Form* of it: The Evidence and the Opinion of the Court are stated; and these two Justices who have sealed it have *agreed this to be the Evidence*; and the Exceptions are taken to the *Consequence of Law arising from it*.

But notwithstanding that, I am of Opinion that a Bill of Exceptions will *not lie* in the present Case. Consider what the Words of the Statute of *Westm. 2. c. 31.* are, "*Cum aliquis IMPLACITATUR coram aliquibus Justiciariis, proponat Exceptionem, &c.*" And therefore the Observation that has been made at the Bar upon the Word "*Implacitatur*" is material, "that it must be *such a Proceeding as in Construction of Law is an IMPLEADING of the Party.*"

Lord Coke, in his 2 *Inst.* 427, says, "This Act doth extend as well to the Demandant or Plaintiff as to the Tenant or Defendant, in all ACTIONS *real, personal and mixt.*" He does not seem to have any Apprehension that it can be carried *further*: He says nothing of *criminal* or *summary* Proceedings. And though he has no negative Words, yet he seems to *intimate* that it lies in those Cases ONLY which he has mentioned.

There is no Case, ever since the Statute, that can support a Determination "that it *does lie* in any other Cases." Indeed there is an Expression in *Lambard** (from *Merrow*) "that it does lie to Ju- * *V. Lib. 4.*
"stices of Peace upon Indictments." But that is not known in "13.
Practice, nor authorized by the *judicial Resolutions* of any Court.

In Sir *Hen. Vane's* Case, the Indictment was for *Treason*; but it is there resolved "that a Bill of Exceptions does not lie in *any criminal Cases* at all; but *only* in Actions between *Party and Party*." 1 *Levinz.* 68. and 1 *Siderf.* 84. S. C. where the Words are "that the Statute of *W. 2. c. 31.* which gives a Bill of Exceptions, does not extend to *any Case* where Prisoners are indicted at the *King's Suit*: For it intends to remedy the over-ruling the Evidence, in.

"in *civil* Pleas between Party and Party *only*." And *Kelynge* 15. S. C. reports the same Resolution, "that it extends *only* to civil Causes, and *not* to criminal;" and adds, "And the Intention never was to give such Persons Liberty to put in Bills of Exception: For then there would be no Trials of that Nature ever dispatched in any Time, if every frivolous Exception, which a Prisoner would make, should be drawn up in a Bill of Exceptions."

It has been said, that it would be strange that such an Advantage should be allowed to the Party in Case of a two-penny Property, and should *not* be allowed in a Case where *Life* is concerned.

But there are *many* Cases, where the same Advantages are *not* allowed in Cases of Life, which *are* allowed in Cases of Property only. For Instance, a Criminal, in a Case of Life, is not allowed Counsel, in the Course of his Trial, upon Matters of Fact: Neither can he have a Writ of Error without the Leave of the Crown. This sounds very harsh: But the Course has been constantly so, in both these Points. And I dare say No-body had ever any Apprehension that a Bill of Exceptions would lie in a CAPITAL Case. If it would, we should have it from every Prisoner at the *Old Bailey*: And very few Criminals would have failed to attempt it, for the Sake of the *Delay* with which it would be attended. However hard therefore this Course may seem, yet for the *Expedition of Justice*, and because the Law esteems the Judges to be of Counsel with the Prisoners, it has always been submitted to.

I take it to be settled, "that *no* Bill of Exceptions will lie in a *criminal* Case:" Though I do not know that there has ever been any direct judicial and absolute Determination to that Purpose.

I therefore give *no Opinion* as to that Point; nor is it properly before us. Lord *Raymond* doubted of it in the Case of *Bunts*. I was of Counsel in that Case. It was in *Hil. 2 G. 2*. I was then Attorney General. It was an Information for a Libel; (for publishing one of *Mist's Journals*.) A Bill of Exceptions was tendered. Lord *Raymond* seemed to declare an Opinion, "that a Bill of Exceptions would *not* lie in a *criminal* Case." To avoid Difficulties, I consented (as there had been other Convictions) to withdraw a Juror. Lord *Raymond* there mentioned the Cases of Informations in the *Exchequer*. But they have always been taken as Suits for the King's Debts. In the *Exchequer* it has been allowed; and is the Practice in Suits by the Crown: But all those Proceedings which have been insisted on at the Bar are taken to be the *civil* Suits of the Crown. Informations there for Duties are so: And they are only for the single

gle Value. Then came the Practice of bringing *Deventrants* for the Penalty; which was *originally a Civil Suit*, and was anciently called the King's *Action of Trover*. Formerly, the King recovered only the single Value, though it was by Way of Information. Since that, subsequent Acts of Parliament have added the Forfeiture of the triple Value: But still they have gone the old Way, and observed the same Rules. I do not know that they have been esteemed criminal Prosecutions in any other Courts. However I give *no Opinion upon that Matter*: For it is *not similar* to this Case.

This is the Case of an Appeal to the Quarter Sessions, and in a Point relating to *Police and Government*. Their Determination is *final*, as to Matters of *Fact*; though not as to Matters of Law.

I know no Instance where it has been imagined that a Bill of Exceptions will lie upon a SUMMARY Proceeding. If it will lie in *one* Case of a summary Proceeding, it will in *another*. And what would be the *Consequence* of that? It would hold equally, in Cases of *summary CONVICTIONS*; since *summary Convictions* are in the same Case as *this* summary Proceeding: And it would introduce into them much Delay and Expence; which are the two Evils meant to be avoided by the Institution of summary Proceedings. If a Bill of Exceptions should lie to the Sessions, so it would also to the two Justices. But No-body ever imagined that it would lie to *their* Judgment.

This Case is a great deal *stronger* than the Case of *Convictions*; because the Proceedings here are *not of Record*. And that is the Reason why they needed not to be inrolled in *Latin*, pursuant to 36 Edw. 3. c. 15. The general Rule was, "that where the Proceedings were of *Record*, there it was necessary that they should be in *Latin*: Where they were *not of Record*, there it was *not necessary* to be in *Latin*."

This is merely an Exercise of Authority of the Justices by Way of *Order*, made on hearing Evidence of the Facts *viva voce*. A *Writ of Error not lying* is one of the strongest Reasons why a *Bill of Exceptions* should *not* lie: For, the Bill of Exceptions cannot (any more than the Writ of Error) be made Use of in the *same* Court to which it is tendered. In the Case of Bills of Exceptions to Evidence on Trials at Bar, they do not come to be determined in the *same* Court. In the Case of *Truro*, where there was a Bill of Exceptions upon a Trial at Bar, a Writ of Error was brought, to reverse the Judgment. And I take it that a Writ of Error is always in such Case brought; and the Bill of Exceptions goes up with that.

M

And

• V. W. 2. c.
31. *Et si forte
adquerimoniam
de facto Justi-
ciariorum Ve-
nire faciat
Rex recordum
coram Eo.*

And this arises from the Words* of the Statute, which are very material;—"And if the King, upon Complaint made of the Act of the Justices, cause the Record to come before him;" (that is, upon Complaint of the Judgment of the Justices:) And all Writs of Error do complain of the Judgment of the Justices. But a *Certiorari* does not complain of the Judgment of the Justices, in the least. This strikes me very strongly; and shews that a Bill of Exceptions will not lie upon a *Certiorari*.

The Case of *Liverpool* in the Petty Bag, *Mich. 11 Ann. The Queen against The Corporation of Liverpool*, was between four and five hundred Years after the making the Statute of *W. 2. in 13 Edw. 1.* But that was a Proceeding quite at *Common Law*: And if it had come to an Issue, it must have been delivered into Court per *Manus Cancellarij*, who is a Judge within the Meaning of the Statute.

But the Justices at Quarter Sessions are not within the Description or Intent of the Statute. The Observation made by the Counsel for supporting the Orders, "That the Justices at Sessions are Judges of Fact as well as Law; that they are Jury as well as Judges; and that it is in their Breast only, whether to believe or disbelieve the Evidence;" is very material. And who is to take upon himself to say what they believe of the Evidence; and what they do not believe?

In the common Case of Bills of Exception tendered to the Judges, the JURY alone are the proper Persons who would be to consider whether they believe the Evidence, or not: The Judges have nothing to do with the Belief of the Evidence; they are not to determine upon the Credibility of the Evidence, but upon the Consequence of Law arising from it.

But here, suppose six of the Justices believe the Evidence, and two of them do not believe it, are the two to conclude the six, as to the Belief of the Fact? Where the Justices specially state the Fact, it is the Act of the whole Court; and it must be done by the Majority: But here two only out of the whole Number have sealed the Bill of Exceptions.

Therefore upon the Act of Parliament itself, upon the Determinations on this Head; and upon the Consequence that may follow, I am of Opinion that the Order be affirmed; abstracted from any Regard to the Bill of Exceptions, which does not, I think, lie in the Case now before us.

Mr.

Mr. J. PAGE.—This is quite a new Case: And I think it is *neither* within the *Words* or *Intent* of the Act.

Consider what Mischief may arise. If a Bill of Exceptions lies in all these Cases of summary Jurisdiction, it is in a great Measure putting an End to the Acts of Parliament which give them. The Acts which give this Jurisdiction intended that Points of Settlement of poor Persons should be determined *as soon*, and with *as little Expence*, as possible. But in this Way of admitting Bills of Exceptions, the *Expence* would be as much as would be sufficient to maintain the Poor; and the *Delay* would be so long and tedious as to make the Mischief much greater than could arise from the other Construction of not admitting them in these Cases.

Neither do I know how the Bill of Exceptions can *come hither*. Here is *no Writ of Error*: And I do not know that a CERTIORARI will *remove* the Bill of Exceptions.

And what can this Court do in a Point of *Fact*? Suppose the Justices to *differ* from each other in their Belief of the Facts; how can *this* Court try *which* of them believe *right*? If we could meddle at all, it must be by directing an *Issue*: And then there might be a Bill of Exceptions *upon* a Bill of Exceptions.

A Bill of Exceptions can not be tried and determined by the *same* Court, to which it is tendered: Even upon a Bill of Exceptions at the Assizes, the Matter must be rectified by a *superior* Court. So that I do not know where there would be an End of it. And the *Expence* attending it would be greater than the Matter in Question would bear.

Was there ever a Writ of Error or a Bill of Exceptions brought upon a Determination of a Court of *Conscience*? And yet there is an *Impleading*, though indeed not of Record. If a Bill of Exceptions should lie *here*, it would *as well* lie to the Determinations of *Commissioners of Excise* and other *summary* Jurisdictions, as to *this*; And it would lie as well to the *two* Justices who make the original Order of Removal, as to the *Sessions*.

I concur with my Lord's Opinion "that the Order ought to be affirmed; and that *no* such Bill of Exceptions will *lie*."

Mr. J. PROBYN.—This must be considered as a *Jurisdiction* given by *Act of Parliament*, and *not* a Proceeding at *Common Law*. Here are *no* Pleadings upon Record.

The Proceedings of the Justices are in a SUMMARY Way: They are Judges of the *CREDIBILITY* of the *Evidence*, as well as Judges of the Law which arises upon that Evidence. Therefore this Case

differs from those Cases where a Bill of Exceptions is tendered to those Courts who are Judges *ONLY* of the *Law* which arises upon the Evidence. Upon Trials, the Jury ought not to have any Evidence laid before them, but what is proper: But here the Justices themselves are Judges of the Evidence.

Here, the Foundation of a Bill of Exceptions is taken away; because we can not say *what they believed concerning the Fact*. Some might believe, and some disbelieve the Witness: So that the same Judgment would be right in some, and wrong in others. We can only judge upon the *Law*, admitting the Fact to be one Way or the Other.

If a Bill of Exceptions will lie to *one* summary Jurisdiction, it will likewise lie to *another*. These summary Jurisdictions are given to Gentlemen in the Neighbourhood, who are supposed capable of knowing the *Facts* and the *Credibility of the Witnesses*. Their Determination is certainly *final* as to the *Facts*: And I do not know whether it was not *meant* to be so upon the *Law* too; (though indeed the Jurisdiction of the superior Courts can not legally be taken away but by express Words.)

And *no* Bill of Exceptions having *ever* been brought in a Case of this Kind, is a strong Argument, with me, to believe that it has always hitherto been thought, "that by Law it *could not* be done."

I will not go over the Reasons that my Lord has already given, lest I should lessen the Weight of them by my repeating them. But I will say, in general, that since this Method would render the Determination of Settlements *more expensive*, as well as *more tedious*; and since the *other Construction* has been *always submitted to*; I concur with the Opinion "that the Orders be confirmed."

Mr. J. LEE.—This is a Case which is attended with very odd Circumstances. It is a Case, as to *material* Exceptions, the *weakest* that can arise upon the Act of Parliament; because it is an Exception to the Judgment of the Justices upon the *whole Case*: If it had been to any *particular* Point, it had been stronger.

It is certain, that the Intention of the Statute of *W. 2. c. 31.* is, that the Bill of Exceptions shall be allowed, to the End that the Matter may be stated *in Writing*, when it *does not* appear upon the Roll. But *when the whole appears upon the Record*, then there is no Occasion for the Bill of Exceptions; because the *whole* Matter will appear to the *superior Court*.

This is an Exception for *not having stated the Facts*: And if the real Truth of the Case be stated upon the Bill of Exceptions, I should
not

not have been of the same Opinion with the Sessions, upon the Facts.

But we are to give our Opinion "Whether a Bill of Exceptions lies to the Justices at their Sessions, or not." And I am of Opinion "that it does not lie."

There is a Case in 2 Lev. 237, 238, in which it was argued that there are two Ways of taking Advantage of a Bill of Exceptions; one, by Writ of Error; the other, in Arrest of Judgment. There is no Determination indeed upon that Point: Though the Court said "that the Precedents cited were good Proofs that it might be used upon a Writ of Error, but did not prove that it could not be made Use of by Motion in Arrest of Judgment." However, they gave no positive Opinion as to this Point.

I take it to be now settled, and that it is the established Method, "that it must be by Writ of Error." In the Case of *Truro*, there was a Writ of Error brought, and the Bill of Exceptions went up with it: In the Case of Lord *Barrington*, there was a Bill of Exceptions before the Judge of *Nisi Prius*; and a Writ of Error was brought afterwards to the House of Peers.

The true Method therefore I take to be, that *there must be a Writ of Error, upon the Exceptions* specified in the Bill: For, the Writ of Error is founded on that. But there can be no such Thing in summary Proceedings before Justices. And I do not know any Authority that the Court have, to enquire concerning a Bill of Exceptions, unless it comes to them by a Writ of Error from the Court who have over-ruled the Exceptions.

Lord Coke* specifies "*Actions, real, personal and mixt*; and mentions no other. Besides, A Bill of Exceptions tendered to the Sessions upon the Merits of the Case is inconsistent with the Statute, which makes their Determination final as to the Merits. It seems to me to be a Contrivance, by a Method in the Nature of a Writ of Error, to have an *Appeal* from their Determination.

I think such a Bill of Exceptions can not be maintained. But yet I am not willing to affirm an Order which I think is a wrong one, if the Fact really be as it is stated in the Bill of Exceptions.

LORD HARDWICKE.—There is that Case of *Enfield v. Hills*, in 2 Lev. 236. which my Brother Lee has mentioned*. But it has been long ago settled, "that a Bill of Exceptions can not be taken Advantage of by Way of Motion in the same Court."

I remember a Case from the House of Lords in *Ireland*, where it was so determined. The Court of *Exchequer* in *Ireland*, (out of which

* 2 Inst. 427.

* And v. Sir

T. Jones 116,

S.C. but with-

out any Hint

of the Opinion

of the Court

upon it.

which

which Court the Record of *Nisi Prius* went,) had entered into the Matter, upon a Bill of Exceptions tendered to and sealed by the Judge of *Nisi Prius*. The Lords held it to be an *irregular* Proceeding; and that it *ought not* to have been taken Notice of by the *same* Court: And so the Judges held, who were then present. And the Judgment of the Court of *Exchequer* in *Ireland* was therefore reversed.

It is to be wished, if the Fact be in Truth so as it is stated in the Bill of Exceptions, that some Method could be thought of to set it right. But that can not be done without *Consent*: We can not *judicially* take Notice "that this *was* the Fact."

But perhaps we may hear of this Case again: It may be cited to us as an Authority for establishing the *Opinion* which the Sessions have here determined upon. To prevent which, I think we should specify the particular Reason of our Determination in our present Rule. Therefore let the Order be affirmed, with this Reason inserted in the Rule.—"The Court being of Opinion that a Bill of Exceptions doth
" NOT lie in this Case."

Per Cur.—

RULE ACCORDINGLY: viz.

Wednesday next after one Month from the Feast Day of *Easter*, in the ninth Year of King George the Second.

Co. Pal. of Chester. } UPON mature Deliberation had here in
The King against } Court, it is ordered that the Order of Ses-
The Inhabitants of } sions in this Cause be affirmed; the Court be-
Preston on the Hill. } ing of Opinion "that no Bill of Exceptions
" lies in this Case."

On the Motion of Mr. *Wilbraham*.

Trinity

Trinity Term

10 Geo. 2. 1736.

Rex v. The Inhabitants of Burnham.

N^o 25.

UPON *Friday* the 4th of *June* last, a Motion was made to quash an Order of Sessions which quashed an Order of two Justices, removing *James Rogers*, *Hannah* his Wife and *Hannah* their Daughter from *Burnham* to *Huntspill*. *Thursday 1st July 1736.*

The special Case stated was, That this *James Rogers* served six Years as an Apprentice to *Robert Deane* in *Huntspill*; and after the Expiration of his Apprenticeship, about a Week before *Christmas* 1722, hired himself as a Servant to one *Giles Durston* of *Burnham*, to serve him for HALF a Year from that Time till the *Midsummer* following, for the Wages of 3*l*; and served him accordingly; and received his said Wages: And after the Expiration of that Term, continued in his Master's Service about a Week; and in that Time covenanted to serve him to the *Lady-day* following at 5*l*; and accordingly served him till that Time, and received the said Wages; being, all this Time, unmarried and without Child or Children. And it appearing that *Hannah* the Daughter was a Bastard born out of lawful Matrimony, and was not born in the said Parish of *Huntspill*; the Sessions adjudged *Burnham* to be the Place of his last legal Settlement, by Virtue of such Hiring and Service with *Giles Durston*: And therefore they quashed the original Order.

The Exception taken to this Order of Sessions was, "That there was no *HIRING* for a Year."

Upon shewing Cause, it was said that *Hannah* the Daughter was a Bastard, and was NOT born in *Huntspill*; and therefore the Order of Sessions is right as to that. The Counsel for *Huntspill* admitted that the Order of Sessions was wrong, as to the Man and his Wife:

I

Yet

Yet they said it ought to be confirmed, as to the Child. And I took it that a Rule was drawn up accordingly: But I find *no Rule at all* entered in the Rule-Book.

N^o 26.

Rex v. The Inhabitants of Heptonstall.

Saturday 3d
July 1736.

ON Thursday 27th of May last, a Motion was made to quash an Order of Sessions discharging an Order of two Justices made for the Removal of *Daniel Helliwell* with *Martha* his Wife and seven Children from *Heptonstall* to *Errendon*, (both in the West Riding of *Yorkshire*.)

They discharged the Order of the two Justices, on Proof (as they stated in their Order) of the Facts following; viz. *Helliwell* went by Certificate from *Errendon* to *Wadsworth*; then was licensed to be Clerk of a parochial Chapel at *Heptonstall*; and resided a Month at *Wadsworth* (*Wadsworth*, *Errendon* and *Heptonstall* being different Towns in the same Chapelry;) then removed to *Heptonstall*, and inhabited there five Months; during all which Time, he executed the Office of Clerk of the Chapel there.

The Objection at first made to this Order was, That nothing appears to give the Pauper a Title to a Settlement, but a LICENCE to be Clerk of a parochial Chapel: Whereas a Licence from the Bishop will not gain a Settlement, without a CHOICE by the PARISHIONERS†.

† V. ante,
N^o 24.

But, now, upon shewing Cause, another Objection was made to this Sessions-Order; which was, That in the Caption of it, the Sessions are said to be holden on such a Day by Adjournment: But it does not appear when the ORIGINAL Sessions were holden.

The Counsel who was to shew Cause against quashing the Order of Sessions (*Mr. Strange*) said, He could have undertaken to have supported it upon the special Matter.

Per Cur.—This is a fatal Exception: The Order must be quashed.

The Counsel for the Order of Sessions then made two Objections to the *Certiorari*: Both which were over-ruled, as being quite immaterial.

Mr. Strange then objected to the original Order of the two Justices. (1st,) It does not set out the Ages of the Children. (2dly,)

(2dly,) These were *certificate* Persons : And it is not said, that they were *actually* become chargeable.

To which the Counsel for quashing the Order of Sessions (Mr. Abney and Mr. Denison) answered, that the Certificate was directed to *another Township, viz. to Wadsworth*; and was *left there*: So that he did not come to *Heptonstall* by Certificate from *Errenden*. And as to the other Objection—*Errenden* is said to be the Place of *their* last legal Settlement; and it is therefore well enough.

Cur.—That goes to all; and is an Answer. Where a Place is adjudged only to be the last legal Settlement of *the* FATHER, and the Children are only sent thither in Consequence of its being their Father's Settlement, the Ages of the Children *must* be set out; because they may perhaps have gained a Settlement for themselves, since: But it is not necessary to set out the Ages of the Children, where the Justices adjudge the Place to which they remove them to be the Place of *their own* last legal Settlement.

The Rule must be made absolute to quash the Order of Sessions.

The ORDER of SESSIONS QUASHED:

Original ORDER AFFIRMED.

N

Michaelmas

Michaelmas Term

10 Geo. 2. 1736.

N^o 27.

Rex v. The Inhabitants of Worth.

Monday 25th
Oct. 1736.

A Motion was made on the last Day of *Trinity* Term last, to quash an Order of Sessions confirming an Order of two Justices for the Removal of *Mary Simmons* and her four Children from *Merstham* to *Worth*.

The Case stated in the Order of Sessions is, That one *Francis Simmons* with his Wife and Children came into the Parish *Merstham* in *Surry*, by Certificate dated in *February* 1709. That about *Michaelmas* 1726, *Mary Simmons*, the Daughter of the said *Francis*, intermarried with one *Robert Scott*, a *Scotchman* not having gained any Settlement in *England*. That one *Mary Harbour*, a Widow and Grandmother of the said *Mary*, had purchased three separate Tenements of one *Savage* in *Merstham* aforesaid; and being so possessed, in Consideration of a Marriage then lately had between the said *Scott* and the said *Mary Simmons*, by her Deed of Feoffment dated 22 Oct. 1726, did bargain, sell, alien, enfeoff, remise, release and confirm one of the said Tenements and its Appurtenances in *Merstham* aforesaid, to hold to the said *Scott* and his Wife and their Assigns for the Term of their natural Lives; and from and after their Death, then to the Use of the Heirs of the Body of the said *Robert* on the Body of the said *Mary*; and for Want of such Issue, then to the Use of the right Heirs of the said *Mary* for ever, and to no other Use or Behoof whatever. That the said *Robert* and *Mary* entered into and dwelt in the said Tenement, soon after the Date of the said Deed of Feoffment; and continued there till about *Michaelmas* 1735: In which said Tenement they had four Children born, all under seven Years of Age; and have since let the said Tenement to one *John Morris* for 40s. a Year. That the said Tenement was at the Time of the

the Execution of the said Deed, and still is, UNDER the Value of 30*l*. And that the said Robert Scott hath been CHARGED to and PAID the LAND-Tax for the said Tenement, ever since the Date of the said Deed of Feofment.

Upon this Case, the Sessions dismiss the Appeal; and confirm the Order of the two Justices.

The Exception taken to this Order of Sessions was, That Robert Scott had gained a good Settlement in *Merstham*, by being charged to and paying the Land-Tax there, whilst he lived upon his own; though it was under 30*l*. per Annum in Value, and conveyed to him since the making of 9 Geo. 1. c. 7. sect. 5.

A Rule was made to shew Cause why both these Orders should not be quashed: Which was now made absolute, without Defence.

Rex v. The Inhabitants of St. Nicholas in Ipswich. N^o 28.

A Motion was made on Friday the 6th of February last, to quash an Order of Sessions which discharged an Order of two Justices made for the Removal of James Blyth and Margaret his Wife, and Thomas, James and Mary their Children, from the Parish of St. Nicholas within the Borough of Ipswich, to St. Peter's in Ipswich.

Thursday 23d
Nov. 1736.
V. 2 Sir J.
Strange 1066,
and Sess. Ca-
ses, Ed. 1750,
Vol. 2. pa.
231, N^o 162.
S. C.

The Case stated by the Sessions was this—James Blyth, being under sixteen Years of Age and unmarried, was bound Apprentice to J. B. of St. Peter's in Ipswich aforesaid, Cordwainer, by Indenture and with the Consent of his Father, for the Term of FOUR Years only; and dwelt with and served his Master in St. Peter's, only the said four Years. Whereupon the Sessions being of Opinion “that the said Binding and Inhabiting pursuant thereto did not intitle the Pauper to a Settlement in St. Peter's; because he was not bound for seven Years according to the Statute in that Case;” They therefore discharge the Order of the two Justices.

To this Order of Sessions it was objected, That the Sessions had mistaken the Law: For by the Statute of 3 & 4 W. & M. c. 11. sect. 18. a Binding for four Years, or any other Time UNDER seven Years, together with an Inhabitaney for forty Days, would gain a Settlement. For, the Words of that Section are only these—“If any Person shall be bound an Apprentice by Indenture, and inhabit in any Town or Parish, such Binding and Inhabitation shall be adjudged a good Settlement.” And the Case of St. Bride's and

St. Saviour's, in 2 Salk. 533, was only a Binding for four Years. A Rule was made to shew Cause why it should not be quashed.

Upon arguing this Case on the last Day of the same Hilary Term, the Counsel for St. Peter's, in Support of the Order of Sessions, insisted that this Indenture was void to all Intents and Purposes, by 5 Eliz. c. 4. sect. 41. whereby it is enacted, "That all Indentures for taking any Apprentices, otherwise to be made than by that Statute is appointed, shall be clearly void in the Law, to all Intents and Purposes." And it is appointed by the 26th Section of the same Statute, "that Persons dwelling in Cities and Towns Corporate shall take Apprentices for SEVEN Years at the least."

Whereas this Master, dwelling in a Town Corporate, has taken this Apprentice only for FOUR Years.

They said it was as much absolutely void as if the Indenture had been unstamped: In which Case it would be as no Indenture or Binding at all; because it was not stamped agreeable to 8 Ann. sect. 39. To prove this, they cited a Case in Pasch. 4 G. 2. 1731, between the Parishes of Cuerden and Leyland: (v. 2 Strange 903, and Sessions Cases, Ed. 1760, Vol. 2, pa. 167, N^o 134.)

ADJOURNED.

Opon Saturday 3d July 1736, the Counsel for the Parish of St. Nicholas moved to make the Rule absolute. But Lord Hardwicke intimating some Doubt whether this Case might not come within the cited Case of Cuerden and Leyland; it was again

ADJOURNED.

On the Tuesday following, this Case was again argued.

LORD HARDWICKE observed, that as this is a very extensive Question, it would be proper to consider maturely the Act of 5 Eliz. For, if the Court should make this strict Construction of the 41st Section, "That EVERY Indenture of Apprenticeship shall be ABSOLUTELY void where every Circumstance of the Directions of that Act is not exactly pursued," he was apprehensive that such Construction would be attended with very great Inconvenience, more than can easily be foreseen. And it might be doubted, he said, upon the 26th Section, whether the Words "shall and may," there used, should be taken so strong as to make all other Bindings void: Or, whether that and the next following Clauses were only inserted for the Benefit of Corporations.

It was once more ADJOURNED.

Upon

Upon its being now again argued, The Court gave their Opinions at large.

LORD HARDWICKE said—This is a Case of very great Consequence, and of a very extensive Nature: If this be a *valid* Objection, “That the *Indenture* is void,” it is very surprising that it has not been taken before now. But I do not find that it has been ever taken, with Relation to a Settlement.

The Exception to present Order of Sessions is, that by the special State of the Case it appears that the Pauper was bound in the Parish of *St. Peter* within the Burrough of *Ipswich*, for the Term of *four Years only*: And upon *that* Foot, (for all the *other* Qualifications are taken for granted) the Sessions have taken it up, and held it to be a *bad* Settlement. The Question is, “Whether an Apprentice bound for *less* than *seven* Years can gain a Settlement.”

I am of Opinion, that he *may* gain a Settlement under such a Binding; and therefore that this original Order of the *two Justices* is *good*, and the Order of *Sessions* consequently *bad*.

The Words of *5 Eliz. c. 4.* are very strong. In *sect. 26.* they are these—“That every Person being an Householder and twenty-four Years old at the least, dwelling or inhabiting or which shall dwell and inhabit in any City or Town Corporate, and using and exercising any Art, Mystery or manual Occupation there, *shall and may*, during the Time that he shall so dwell or inhabit in any such City or Town Corporate and use or exercise any such Art or Mystery or manual Occupation, *have and retain* the Son of any Freeman not occupying Husbandry or being a Labourer and inhabiting in the same or in any other City or Town that now is or hereafter shall be and continue incorporate, *to serve and be bound as an Apprentice* after the Custom and Order of the City of *London*, for *seven Years at the least*; so as the Term and Years of such Apprenticeship do not expire or determine afore such Apprentice shall be of the Age of twenty-four Years at the least.”

BETWEEN this 26th Section and the 41st, there are a great many Regulations concerning the Persons who are to *take* an Apprentice, and who are to be *bound* Apprentices.

THEN comes Section 41st, which says, “That *all Indentures, Covenants, Promises and Bargains* of or for the having taking or keeping of any Apprentice, *otherwise* hereafter to be made or taken *than is by this Statute limited ordained and appointed*, shall be clearly void in the Law to *all Intents and Purposes*; and that every Person that shall from henceforth take or newly retain any
“Apprentice

“Apprentice contrary to the Tenor and true Meaning of this Act,
“shall forfeit and lose for every Apprentice so by him taken, the
“Sum of ten Pounds.”

The Question therefore turns upon this 41st Section taken together with the 26th. And it is to be inquired—

1st, Whether this 41st Section has a *Relation* to and runs over *all* the several Clauses of the Act, *so as to reach the 26th Section.*

2dly, If it does, then whether it makes such an Indenture *void*; or whether it makes it *VOIDABLE* only.

First, I do not see but that it *does* run over the several Clauses of the Act, *so as to reach the 26th Clause.*

Secondly, But I am of Opinion that it does *not* make this Indenture *VOID*; but *only VOIDABLE*, if the Parties themselves *think fit* to take Advantage of it.

There are many Cases, where though according to the strict Words a Thing is made void, yet such Thing is held not to be *absolutely* void, but *only VOIDABLE*. One Instance of this is the Statute of *Westm. 2. c. 1.* relating to Fines levied by Tenant in Tail. The Act says that the Fine shall be “*ipso Jure nullus*,” (as strong an Expression as can be thought of:) And yet it has been held that it shall *NOT* be *ABSOLUTELY* void against the Issue in Tail; but *only* work a Discontinuance and put him to his *Formedon*, if he thinks fit to take Advantage of it.

In *Hob. 166*, in the Case of *Winchcomb v. Bishop of Winchester and Puleston*, several Cases of this Kind are collected: One which is very material; *viz.* That a Sheriff's Bond against the Statute of 23 *H. 6.* is made utterly void; and yet “*Non est factum*” can not be pleaded to it. *That*, is the Case of a Bond: *This*, of an Indenture.

Here is an Indenture between the Master and his Apprentice to serve for four Years: And the Apprentice has *actually* served four Years. *It has had its Effect between the Parties.* Neither of them has thought fit to take Advantage of any Defect in it. The *Parish* has had the *Benefit* of this Apprentice's Service, (as far as the Service of an Apprentice is a Benefit to a Parish:) And yet the *Parishioners* would make it void. This would, I think, be extremely hard.

I will mention a Case which was not mentioned at the Bar: It is in 1 *Salk. 68.* *Barber v. Dennis*: But is more fully stated in 6 *Mod. pa. 69.* The Widow of a Waterman, who (as was said) by the Usage of Waterman's-Hall may take an Apprentice, had her Apprentice taken from her and put on board a Queen's Ship, where he

he earned two Tickets, which came to the Defendant's Hands; and for which, the Mistress brought Trover. It was agreed, the Action would well lie, if the Apprentice were a *legal* Apprentice: For, his Possession would be that of his Master, and whatever he earns shall go to his Master. But it was objected, "that this supposed Apprentice was *no legal* Apprentice, if the Indentures be not *enrolled pursuant to the Act of 5 Eliz.*: And if *he were not a LEGAL Apprentice*, the Plaintiff had no Title." But Lord Chief Justice Holt said, "He would understand him an Apprentice or Servant *de facto*; and *that* would suffice against them being Wrong-Doers." In the Report in *Salkeld*, the Word "*Servant*" is not mentioned. (And indeed an Action could not have been brought for a *Servant's* Wages, either on Board, or elsewhere: For a Master can not bring an Action for the Wages of his *Servant*; tho' for the Wages of an *Apprentice* he may; because the *Time* of an *Apprentice* is considered as the *Time* of the *Master*; and what is earned by the Apprentice is considered as *belonging* to the *Master*.) Now if the Construction of this Act had been so *very strict* as is contended for by the Counsel who have argued in Behalf of this Order of Sessions, such a Construction would have avoided the Apprenticeship, to the Effect then in Question; and the Mistress could *never have maintained* that Action.

Therefore I am of Opinion that this Indenture is *not* void, so as to be liable to be taken Advantage of by a third Person; but *VOID-ABLE only*, at the *Election* of the Parties, if they think fit to take Advantage of it. And it would be extremely hard that all these Indentures should be absolutely void for Want of any *single* Qualification required by this Act.

If the *TIME of Service* was the *only* Circumstance liable to this Objection, I should not think it of so much Consequence; (for, I believe, there are *not many* Bindings for a *less* Term than *seven Years*.) But there are a vast many *other* Qualifications that are mentioned in the Act of 5 *Eliz.* which are all liable to the same Objection. And if a *Binding for seven Years* be necessary, it follows, that if *any one* of these Qualifications are *wanting*, the Indenture will be in the *very same* Case as if this Circumstance of *Time* was wanting: And if so, I question whether any one Settlement under an Indenture of Apprenticeship has been gained for fifty Years past. Therefore upon *this* Argument, I am of Opinion that the Settlement is good; though the Binding was only for four Years.

But then there comes the Statute of 3 & 4 *W. & M. c. 11. s. 8.* which enacts, "That IF any Person shall be bound an *Apprentice* by Indenture,

"*Indenture*, AND inhabit in any Town or Parish, *such Binding and*
 " *Inhabitation* shall be adjudged a good Settlement, though no such
 " Notice in Writing be delivered and published as aforesaid:"
 from whence it is inferred, that IF there be *no Binding* by 5 Eliz.
 then there is *no Settlement* by 3 & 4 W. & M. But this Act of King
 William and Queen Mary takes it up as it finds it; and only intends
 " that an Apprentice should not be obliged to give Notice in Wri-
 " ting." And the Construction of both Statutes must be the
 same.

And though the NOTION of Settlements of poor Persons had not
 obtained at the Time when the Act of 5 Eliz. was made, as it has
 done since; yet it was a Mistake of one of the Counsel, to say,
 " that the 33 Eliz. was the first Act relating to the Settlement of
 " poor Persons." For, 27 H. 8. c. 25. (which is printed in Raf-
 tall's Edition of the Statutes at Large,) establishes a Settlement for
 such as had been born or dwelt three Years in any Parish: And there
 was a subsequent Statute made in Ed. 6th Time. [v. 1 Edw. 6. c. 3.]
 But indeed the present Notions of Settlements have taken their Rise
 from 13 & 14 C. 2. c. 12.

The principal Objection to this Binding for four Years only, was
 founded upon the Determination of the Court in the Case of *Cuer-*
den and *Leyland*; where the Indenture was holden to be *absolutely*
void, for want of being stampd. And how to distinguish *that* Case
 from *this*, is the Difficulty: And, if there had been no other Words
 in the Act of 8 Ann. c. 9. than there are in this, the Difficulty had
 been great enough. But that Case *materially differs* from the pre-
 sent: For, in *that* Case, there were not only the Words—" that all
 " Indentures whereupon the Duty was unpaid, and all unstamped
 " Indentures, should be void;" but the Act of Parliament went on
 further, and added *these* Words—" and NOT AVAILABLE IN ANY
 " COURT OR PLACE, or to any Purpose whatsoever." [v. 8 Ann.
 c. 9. sect. 39.] And there is a subsequent Clause [v. sect. 43.]
 which further enacts " that no Indenture required by " that Act to
 " be stamped, shall be GIVEN OR ADMITTED IN EVIDENCE in
 " any Suit to be brought by any of the Parties thereunto, unless such
 " Party on whose Behalf it shall be given or admitted in Evidence,
 " do first make Oath that the whole Sum really given with the
 " Apprentice, or contracted for, was truly inserted."

So that in that Case it was *superadded*; (1st,) That such Indenture
 should not be available in any Court or Place: (2dly,) That it should
 not be given or admitted in Evidence:—And yet the Order made in
 that

that Case was grounded *upon* the Indenture which was not stampd, nor was the Duty paid. Therefore the Justices admitted a Matter in Evidence which they *ought not to have done*. And it has been holden "that if the Justices admit Evidence which they ought not to admit, it is a sufficient Reason for quashing their Orders." And therefore that Case of *Cuerden* and *Leyland* was *properly* determined; because the Justices *should not have admitted the Evidence* upon which they grounded their Order.

Therefore I am of Opinion that the present Indenture is *not absolutely void*, but *only VOIDABLE* (at most.) Consequently, the Order of Sessions is bad, and ought to be quashed; and the first Order, affirmed.

THE OTHER THREE JUDGES concurred in Opinion "that this Indenture was *not* absolutely void, but *only VOIDABLE*;" and even that, at the Election of the *Parties* only, *not by a third Person*: For, that this Indenture could only be avoided by the Master or Servant, who were the *Parties to it*; but *not by the PARISH*, who have had the *Benefit* of the Service of this Apprentice.

They added some Instances to prove that where the strict Words of Statutes seem to make Things Nullities, yet they must be regularly *avoided*, before they shall be absolutely considered as such: Particularly, where a previous Sentence of Excommunication is requisite; though a Statute says "that the Person shall be *ipso facto* excommunicate." And they thought it would be inconvenient to admit too rigid a Construction of the 41st Clause of the 5 Eliz. c. 4. which seemed to them to be a Law more beneficial to *Corporations* than to the Public in general; and which had not been much regarded or favoured.

Per Cur.—

The ORDER of SESSIONS *must be* QUASHED: And

The ORDER of the two JUSTICES CONFIRMED.

N^o 29.

Rex v. The Inhabitants of Bramshaw.

Saturday 27th
Nov. 1739.

A Motion had been made on *Thursday* the 18th of this *November* 1739, to quash an Order of Sessions confirming an Order of two Justices made for the Removal of *Richard Ireland* and *Elizabeth* his Wife, and *Richard, Christian, John, William* and *Catharine* their Children from *that Part* of the Parish of *Bramshaw* which is in the County of *Southampton* to *that Part* of the said Parish which is in the County of *Wilts*; together with the original Order.

The Order of Sessions states—That *Richard Ireland* came into that Part of the Parish which is in the County of *Southampton*, and took a House there of *Aaron Knight* at the Rent of 3 *l.* for one Year; and that the House was there CHARGED to the Poor-Rates in Manner following, that is to say, in the Poor-Rate made for the Year 1734, "*Aaron Knight 1 s. ditto for the other House 6 d.*" And in the Poor-Rate made for the Year 1735, "*Aaron Knight 1 s. ditto for the little House 6 d.*" Which said House called the other House in the Poor-Rate for the Year 1734, and the little House in the Poor-Rate for the Year 1735, is the same House in which the said *Richard Ireland* lived. That the said *Aaron Knight* was Overseer of the Poor of *that Part* of the Parish of *Bramshaw* which is in the County of *Southampton*, and collected the said Rates: And that the said *Richard Ireland* PAID to the said several Poor-Rates; and after the first Payment to the said Poor-Rates, he lived in the said House for the Space of *two Years and upward*.

To these Orders three Exceptions were taken. 1st, It does not appear that these two Parts of the Parish have *distinct and separate Officers*, or *distinct and separate Poor-Rates*. 2d, It does not appear that there was any Settlement gained by *Richard Ireland* in that Part of the Parish that lies in *Wiltshire*: On the contrary, it is apparent that he was legally settled in that Part of it which lies in the County of *Southampton*. 3d, The *Ages* of the Children are not set forth, in the original Order.

Upon shewing Cause, the Court were clear that both Orders ought to be quashed.

Lord *Hardwicke* was absent. But by the other three Judges—

1st, It should have appeared that these were *different Vills*, and had *separate Officers*, and that each maintained their *own Poor* separately: Whereas it here no otherwise appears than *only by the Direction* of the Order of the two Justices, "that there are *different Officers*:" And the *Direction* is no Part of the Order. Besides, if there be different Officers, it does not follow that there are different Rates. And we can take nothing by *Intendment*: Inferior Jurisdictions must *set out* their Authority.

As to the 2d Exception—Here is an *express Charge upon the Owner* of the House, *not upon the Tenant*: And it is a settled Point, "that a Person must be *rated* as well as pay; otherwise he gains no Settlement." *H. 4 G. 2.* a Case out of *Staffordshire* [between* the Parishes of *Kingver* and *Kingswinford*]*—*where one Man was in Possession and paid the Rate; but the *other* was *rated*: It was held that the Person in Possession, who only *paid* the Rate, gained no Settlement||.

As to the 3d Exception—In an Order to remove Children as Nurse-children, or in Consequence of the Settlement of their Father or Mother, you must shew their Ages. But here it is expressly adjudged, that that Part of the Parish that lies in *Wiltshire* is the Settlement of the Children themselves. [*V. ante*, N^o 26.]

Per Cur.

BOTH ORDERS QUASHED.

Note—The above-mentioned Case of *Kingver* and *Kingswinford* is in *Sessions Cases*, Ed. 1750, pa. 170, N^o 135. But the Case cited at the End of it, (and reported in the same Book, pa. 134, N^o 122.) *Sealon Tongall*, was a Case where *Thomas King* the Occupier paid without being charged: And the Court held *both* to be necessary. *Mich. 13 G. 1.*

* I suppose this was the Case meant. At least, I have such a Case of that same Term.

|| *V. ante*, N^o 21. And see the 4th Part of my Reports, pa. 369, *Rex v. Inhabitants of Uffculme*; and pa. 621, *Rex v. Inhabitants of Painswick*.

Hilary Term

10 Geo. 2. 1736.

N^o 30.

Rex v. The Inhabitants of Lower Walton.

Thursday 10th
Feb. 1736.

TWO Justices removed *Joseph Wilson, Ellen his Wife, Elizabeth, &c. &c.* their Children, from the Township of *Lower Walton* to the Township of *Appleton* in *Cheshire*: The Sessions, upon Appeal, vacated the Order of the two Justices.

The Case stated by the Order of Sessions was thus—*John Wilson*, Father of the Pauper *Joseph*, about ten Years ago, when the said *Joseph* was a Part of his Family, rented a Farm of 18*l.* a Year in the Township of *Appleton*, which the Father held for one whole Year, and during that Time lived upon the said Farm in the said Town of *Appleton*; and his Son *Joseph*, as a Part of his Family, with him during that whole Year. The said *John* the Father afterwards lived in the said Township of *A.* in a Tenement there of about 3*l.* a Year Value: In which last Year the said *Joseph* married, and lived with his Wife and Family, separate and apart from his Father, in another Tenement of small Value, for seven Years, in *Appleton* aforesaid. Afterwards, his Father, having an Estate of about 3*l.* a Year in *Lower Walton*, for which he was taxed in his own Right, and gained a Settlement, agreed with his said Son “that he should hold the “same for a Year, and, instead of paying Rent, should maintain his Father;” which he accordingly did: And his said Son and Family lived in the said Tenement for one Year, and his Father with him; and the said *Joseph*, that Year, PAID Taxes for the said Tenement of 3*l.* a Year in *Lower Walton*, but was NOT RATED in his own Name, but in his Father’s Name; and afterwards continued there till he was removed by the above Order.

The Sessions held that *Joseph Walton, Ellen, &c.* by Reason of the Premises above-mentioned, gained a Settlement in the Township of *Lower Walton*; and therefore vacated the Order of the two Justices.

The

The Objection to this Order of Sessions was, "that *Joseph Watson*, the Pauper, was *not rated*, though he paid.

Cur.—He must both be *rated and pay*, in order to gain a Settlement.

A Rule was made on the first *Saturday* in this Term to shew Cause why this Order of Sessions should not be quashed, and the original Order affirmed: Which was now made absolute, *without Defence*. [*V. ante*, N^o 21, 22, 29, accord.]

Easter Term

10 Geo. 2. 1737.

Rex v. Inhabitants of the Manor of Grafton.

N^o 31.

TWO Justices made an Order for the Removal of *Elizabeth Laughler* from *Stoke-Prior* to the Manor of *Grafton*: And upon an Appeal, the Sessions confirmed that Order.

The Case stated was—That the said Manor of *Grafton* is an *extra-parochial* Place, and formerly a Seat of the Earls of *Shrewsbury*, then consisting of a capital Messuage and three Keepers Lodges in the Park adjoining; and that the Park is since converted into Farms; and that there are now FIVE *Dwelling-houses* and Farms within the said Manor (including the said old Lodges) and now occupied by FIVE *several Tenants*. That the said Pauper was hired for a Year and served a Year within the said Manor; and hath not since gained any Settlement elsewhere: And being likely to become chargeable to the Parish of *Stoke Prior*, the said two Justices, upon Complaint thereof to them made by the Churchwardens and Overseers of the Poor of the Parish of *Stoke Prior*, did, on the 10th Day of *August* last, by an Instrument in Writing under their Hands and Seals, appoint *John Webb*, Gent. an Inhabitant within the said Manor,

Wednesday
11th May
1737.
V. 2 Sir John
Strange 1071,
S. C. Also
Sessions Cases,
Ed. 1750,
Vol. 2. pa.
217, N^o 152.
S. C.

OVERSEER of the Poor within the said Manor; and the Pauper was removed to him by Virtue of the aforesaid Order. That there *never* was any Overseer of the Poor or any other Officer within the said Manor, *till* the said *John Webb* was appointed Overseer as aforesaid; or any poor Person, within the Memory of Man, before removed to or from the said Manor. And it being the Opinion of this Court [of Sessions] "that the said Manor of *Grafton* is now a Village, and "that the Inhabitants thereof ought to maintain their own Poor," this Court [the Sessions] doth therefore, in Consideration of the whole Matter, confirm the said Order, &c.

On a Motion to quash these Orders (*Wednesday 27th April 1737.*) the Question was, "Whether *Grafton* be a Township or Village within 13 & 14 C. 2. c. 12. sect. 21.

Mr. Serjeant *Parker*, who moved to quash these Orders, cited the Case of *Dalham* and *Denham*, (*ante* N^o 11.) and insisted that it was *not* a Township or Village: For, there must be a Constable or Tithingman, in order to constitute a Village; whereas here they have never had any Officer at all. A Rule was then made to shew Cause why the Orders should not be quashed: And now, upon the Motion of Sir *John Strange*, it was made absolute, *without Defence*. [*V. ante*, N^o 11. and the Cases there referred to.]

N^o 32.

Rex v. Inhabitants of Harrowby and Rawlsby North.

Monday 23d
May 1737.

TWO Justices made an Order, on the 13th of *January 1736*, for the Removal of *Thomas Ellis* and *Eleanor* his Wife from *Ancaster* to HARROWBY. Upon Appeal to an *adjourned* Sessions holden upon the 4th of *May* following, this *adjourned* Sessions confirmed the Order of two Justices: But it did not appear *when* the *original* Sessions was first holden. *Intermediately*, viz. on the 20th of *April*, two Justices (one of whom was the same Person that made it,) *called in* the first Order, and made *another*; by which latter Order they removed the Paupers from *Ancaster* to RAWLSBY NORTH. Upon an Appeal from this latter Order, the Sessions *adjourned* all the Proceedings to the next following Sessions.

On the 27th of *April* last, (the first Day of the present Term) a Motion was made to quash the first Order of the two Justices and the Order of Sessions confirming it.

Cause being now shewn,

The

The Court were clear that the second Order made by the two Justices was irregular, as being made pending the first, and before any Appeal, and without shewing any subsequent Settlement to have been gained: And all that was done upon that second Order of the two Justices is therefore out of the Case. But the *first* Order of two Justices has no Objection at all made to it: And therefore, though the *Confirmation* of it at Sessions be invalid, because it does not* appear when the original Sessions were holden, yet the first Order itself must be confirmed.

* *V. ante,*
N^o 26, (the
second Objec-
tion.)

*The first Order of two Justices was CONFIRMED: And
All the other Orders QUASHED.*

ON

The Court was divided 5-4. Chief Justice Warren, joined by Justices Brandeis, Clark, and Douglas, held that the Government's action was unconstitutional. Justice Black, joined by Justices Harlan and Stewart, dissented, holding that the Government's action was constitutional. The Court's decision was a landmark ruling in the history of civil liberties.

The Court of Appeals for the Second Circuit affirmed the decision of the District Court. The Court of Appeals for the Ninth Circuit also affirmed the decision of the District Court.

MO

ON *Sunday* 20th *February* 1736-7, LORD HARDWICKE kissed Hands for the Great Seal; and the next Day appeared in Council and in the House of Lords, as Lord Chancellor: But he continued Lord Chief Justice of the King's Bench till the 7th of *June* 1737.

On *Tuesday* the 7th of *June* 1737, he surrendered the Office of Lord Chief Justice.

On *Wednesday* the 8th of *June* 1737, Mr. Justice LEE kissed Hands for the Office of LORD CHIEF JUSTICE of the Court of KING'S BENCH; and was knighted.

On *Thursday* the 9th of *June* 1737, he was sworn in, before the Lord Chancellor.

On *Monday* the 13th of *June* 1737, being the 4th Day of *Trinity* Term 10 & 11 G. 2. (which begun on *Friday* the 10th,) SIR WILLIAM LEE, KNIGHT, late Puisne Judge of this Court, took his Place upon the Bench, as LORD CHIEF JUSTICE; and took the Oaths, in Court.

On *Thursday* the 16th, SIR WILLIAM CHAPPLE, KNIGHT, one of his Majesty's Serjeants at Law, and senior Judge of the Circuit of *North Wales*, consisting of *Merionethshire*, *Carnarvonshire* and *Anglesea*, was sworn in before the Lord Chancellor as Puisne Judge of the Court of King's Bench: And

On *Monday* the 20th he took his Seat upon that Bench accordingly.

M E M O R A N D U M.

IT was in *Michaelmas* Term 1733, 7 G. 2. that SIR PHILIP YORKE, KNIGHT, then Attorney General, was called Serjeant on *Wednesday* the 31st of *October*, and the same Evening sworn in Lord Chief Justice of the Court of King's Bench before the then Lord Chancellor King. On *Tuesday* the 6th of *November* 1733, he took his Seat upon the Bench; and on the 24th of the same *November* was created a Peer of *Great Britain*, by the Title of Baron HARDWICKE.

On Tuesday the 7th of June 1737, he assumed the Office of
Lord Chief Justice.
On Wednesday the 8th of June 1737, he was sworn in, before the
Lords for the Office of Lord Chief Justice of the Court of
King's Bench, and was knighted.

On Thursday the 9th of June 1737, being the 14th Day of Trinity
Term, he took the Oath of Supremacy on Friday the 10th, Sir Wm.
B. took the Bench, as Lord Chief Justice, and took the
Oath in Court.
On Friday the 10th, Sir William CHARLES, Knt. and one
of the Judges, a Serjeant at Law, and Junior Judge of the Circuit
of Middlesex, together with the Lord Chancellor, and other Judges
of the Court, King's Bench, and
On Monday the 13th he took his seat upon that Bench, according
to the usual Custom.

M. B. M. O. R. A. N. D. U. M.

It was in the 17th of June 1737, 7 G. 2. that Sir Patrick
Yarr, Knt. then Attorney General, was called Serjeant
at Law, and the same Evening sworn in
Lord Chief Justice of the Court of King's Bench, before the then
Lord Chancellor King. On Tuesday the 14th of June 1737, he
took his seat upon the Bench, and on the 15th of the same Month
he was created a Peer of Great Britain, by the Title of Baron
LAWRENCE.

Trinity Term

10 & 11 Geo. 2. 1737.

Rex v. Inhabitants of Butley.

No 33.

ON Monday the 13th Instant, a Motion was made by Mr. *Lloyd*, to quash an Order of Sessions confirming an Order of two Justices made for removing *Thomas Chandler* and his Wife and Children from *Benball* to *Butley*. The Order of Sessions states—That *Thomas Chandler* the Pauper came with a proper Certificate from *Butley*, dated 2d April 1730, which he delivered to the Officers of *Benball*. That he, some short Time afterwards, took a Lease of a Wind-mill in *Benball*, from one *Thomas Green*, for the Term of three Years from *Michaelmas* 1730, at the yearly Rent of 14*l.* and about the same Time hired of *Thomas Mann* a Cottage and a Piece of Land in *Benball*, by Parol, to hold from *Michaelmas* 1730 for one Year, and so from Year to Year so long as it should please both Parties, at the yearly Rent of 3*l.* That the said *T. C.* entered upon the said Mill, Cottage and Premises, and occupied the same for three Years under the said Leases, and paid all the Rent himself: But he had a SURETY who engaged for the Payment of the said Rent for the Wind-mill during the said three Years. That after the Expiration of the said three Years, the said *T. C.* occupied the said Mill for three Years longer under a Parol-Agreement between the said *Thomas Green* and the said *T. C.* “That the said *T. C.* should occupy the said Mill at the said annual Rent, so long “as he should continue to pay the same.” And that the said *T. Green* then did not require any Surety for such Payment. And during those last three Years the said *T. C.* occupied another Cottage in the said Parish of *Benball*, which he hired of *John French* as Tenant at Will at the yearly Rent of 3*l.* 2*s.* 6*d.* And whereas it appears that the said *T. C.* has not any otherwise acquired a legal Settlement in *Benball*, now upon Debate of the Matter, and hearing Counsel on both

Monday 27th
June 1737.
V. 2 Sir J.
Strange 1077.
S. C. and
also Sess. Ca-
ses, Ed. 1750.
Vol. 1. p. 402, No 320.
S. C.

Sides, it is ordered by this Court [the Sessions] that the said recited Order of the said two Justices be and is hereby confirmed.

A Rule was made to shew CAUSE:

On shewing Cause,

The Counsel for the Parish of *Benball* argued "that he gained no Settlement there; for that a *Wind-mill* is not such a Tenement as a Man can settle in:" And yet they admitted it had been determined that a *Water-mill* does gain a Settlement. [*V. 1 Salk. 536. Inter Evelyn Parish and Rentcomb.*] But they said it was plain that this *Wind-mill* was not a Tenement proper to live in; because the Man hired a distinct Cottage, to reside in.

They further urged, that as he was forced to give *Security* for the Payment of the Rent, whilst he held it under the Lease, the Parish could not consider him as a Man of such Substance as not likely to become chargeable: And therefore the Credit of an Ability to rent *10l. per Annum*, which is the Foundation of the Settlement, fails in the present Case.

Mr. Lloyd contra, said that there was no Difference between a *Wind-mill* and a *Water-mill*: And that the Case of *Cranley and St. Mary Guildford*, in *1 Str. 302*, was a Renting of a Mill, in general. And it was not necessary to live in the Mill: It was enough that he lived in the Cottage which he rented in the same Parish.

And the giving Security to pay the Rent don't affect the Settlement. He paid it all, himself.

Mr. J. PACE said he saw no Distinction between a *Wind-mill* and a *Water-mill*. The Miller often inhabits the *Wind-mill*. But whether it be a Dwelling or no, yet still it is a TENEMENT: And he resided in the same Parish.

The great Objection arises from his giving *Security* for the Rent. But the Officers of the Parish have nothing to do to look into that. And at this Rate, a much greater Rent might be insufficient to gain a Settlement; though the Act requires no more than *10l. a Year*. It is the Credit of the Taking a Tenement of such a Value, that is the Point. Suppose a Man had borrowed Money to Stock his Tenements: Has any Body any Thing to do with that? The visible Credit is the grand Point.

Mr. J. PROBYN.—The Court has held a *Water-mill* to be as good a Tenement as Land: And it requires as good a Stock as Land does. A Mill was therefore holden "to be a Tenement," not upon

upon the *Criticism*, but upon the *Reality*. And I see no Difference between a *Wind-mill* and a *Water-mill*: The *Stock*, the *Credit*, are the same. And we cannot take Notice whether it had a *House* belonging to it, or not. Indeed, if the Man had not lived in the *Parish*, it would not have done: But he *lived* in the *same Parish*, and *rented* 17*l.* a Year in it.

Mr. Justice CHAPPLE was of the same Opinion. There is no Difference between one *Kind* of Mill and the other. The *Credit* is the Point upon which it turns: And the *Value of the Rent* is the Thing to be considered.

Both ORDERS were QUASHED.

Rex v. Inhabitants of Widworthy.

N^o 34.

TWO Justices removed John Board and Mary his Wife and John and Robert their Children from Widworthy to Farringdon: Upon an Appeal, the Sessions quashed their Order.

The Case stated by the Sessions was this—This John Board before his Marriage was hired for a Year, and served two Years as a hired Servant, according to the Statute, in the Parish of Farringdon; and afterwards removed into the Parish of Widworthy aforesaid, and lived there with his Father and Mother in a *Cot-house* of the yearly Value of 30*s.* and worked as a Day-labourer for himself: Of which House his said Father then and for many Years before was possessed, for the Residue of a Term of Years determinable on Lives; and whereof he died so possessed, without a Will (his Wife dying before him) leaving the said John Board and one other Son (who is still living, and who took his distributive Share and Part of his said Father's Estate and Effects, in Goods.) And the said John Board, after the Death of his said Father, lived and continued in the Possession thereof for five or six Years, and until such Lease was determined, which happened about a Year and a Quarter since: AFTER which Time, and AFTER the making the said Order of Settlement, the said J. B. TOOK LETTERS OF ADMINISTRATION to the Goods and Chattels of his said Father. This Court [the Sessions] being of Opinion "that the said John Board, BY POSSESSING and LIVING "IN the said Cottage-house in Widworthy aforesaid, GAINED a Settlement in the said Parish of Widworthy," doth therefore vacate and make void the said Order: And the same is hereby made null and void.

Thursday 28th
June 1737.

V. Sessions
Cases, Ed.
1750, vol. 1,
pa. 401, N^o
519, S. C.

On

On Monday the 13th of June (the 4th Day of this Term) Mr. Gundry moved to quash the Order of Sessions, and affirm the original Order: And had a

RULE TO SHEW CAUSE.

In Support of the Order of Sessions, it was now argued, that the two Sons had, upon the Death of their Father, an *Interest* VESTED in them; and after the Agreement between them, the Right VESTED in JOHN: So that the Justices could not have removed him, they said, even before the Letters of Administration were taken out by him. And they cited a Case determined here, in M. 11 G. 1. between the Inhabitants of Wyley and of Ashbrittle in Wilts. "A Man built a Cottage upon the Waste. Afterward, the Lord agreed to grant him a Lease, upon depositing a Sum of Money in a third Hand for a Fine: But no Lease was actually granted by the Lord. The Tenant died. His Daughter lived in it, and married. Her Husband was holden to be settled there, though no Lease was actually granted." [See this Case in 1 Strange 608, and in Sessions Cases, Ed. 1750, Vol. 2. pa. 121, N^o 115.] There was no legal Right.

But this Man came in under the Statute of Distributions, by an Act of Law: And the Justices had no Power to try his Right, which was legally vested in him, nor to examine into the Title under which they found him in quiet Possession.

But per Cur.—The Order of Sessions ought to be quashed.

Lord Chief Justice LEE was absent.

Mr. Justice PAGE said the Order of Sessions ought to be quashed for two Reasons:

1st, At the Time of making the first Order he had gained no Settlement at Widworthy; because NOTHING VESTED in him BEFORE Administration was granted to him. If so, then that Order for removing him was a good Order when made: And the Sessions ought not to have quashed it; though Administration had been afterwards taken out. For they could not quash a good Order, upon a Matter which happened *ex post facto*. If this Administration really gained him a Settlement, there ought to have been a new Order of two Justices, to remove him back to Widworthy. When he was first removed from thence, he had nothing to do with the Cottage: For nothing vested in him till he took out Letters of Administration. Consequently, if he gained a Settlement at Widworthy at all, it was gained subsequent to the Making of the original Order.

I

But

But 2dly, He had it not at all *in his own Right*, even *after Administration*: Nor does it seem to be such a *Sort of Estate* as would gain him a Settlement.

This is a Cot-house of so small a Value as 30s. a Year only, holden upon the Residue of a Term of Years determinable upon Lives. In the Case of *Albritten* and *Wyley*, there was a Continuance of the quiet Possession for thirty Years and a Descent cast. The Pauper had a Title against all the World, except the Lord of the Waste: And it would be a good Bar even against the Lord, in an Ejectment. There, the Pauper clearly had such a Possession as to be irremovable from it. But I apprehend that the Pauper, in the present Case, was removeable even during the Term: However, *afterwards*, to be sure he was. I am of Opinion that the Order of Sessions ought to be quashed.

Mr. J. PROBYN.—The whole depends upon this single Question, “Whether the Pauper was REMOVEABLE *during the five or six Years that he lived in this Cottage*.” For I take the Rule, now settled and established, to be, “that if the Pauper comes to an Estate by Inheritance, or as Executor or Administrator (be it of *ever so small Value*), he is irremovable; and if he remains forty Days in Possession and Inhabitation, he gains a Settlement.”

Now I take it, that the Pauper in the present Case was *removeable*. His Possession rested *only* upon a private Agreement between him and his Brother. If he had taken out Administration *during* the Interest, he *HAD* had a vested Right: But taking out Administration *AFTER the Term expired* could never give him an Interest in the *expired Term*, in which he had *none during its Subsistence*. He was in Possession, merely as a *Tenant at Will*: He was *removeable* by the Parish; and his Right would have been without Foundation, if Administration had been granted *to any one else*. Therefore he had no Right at all, *till* Administration was granted.

The Case of *Wyley* was a strong Case. That was a Descent to the Pauper after a Possession of thirty Years; which was a good Title in an Ejectment, and a Presumption of an Inheritance. It was *prima facie* a good Title as Heir at Law: *None BUT the LORD* could contest the Right. And if a Pauper lives forty Days under a Right which makes him *irremovable*, it gains him a Settlement.

Mr. Justice CHAPPLE was of the same Opinion. For there was *NO Time DURING the Continuance* of this Lease, when the Pauper

per was *irremovable*: And without remaining forty Days *irremovable*, a Settlement could not be gained by him.

And he observed, that there was NO AGREEMENT at all between the Brothers "that the PAUPER SHOULD TAKE THIS LEASE as his distributive Share:" Or at least, no such Agreement appears "to us." It is only stated, "That the other Brother DID take his Share in Goods; and *John* did live in the Cottage." But it don't appear that this happened in Pursuance of any preceding Agreement "that it should be so."

The ORDER of Sessions was QUASHED: And
The ORDER of the two Justices AFFIRMED.

See the Case of *The King* against *The Inhabitants of Cold Ashton*, in the 4th Part of my Reports, Pages 503, 504, 505, 509 and 510.

Michaelmas Term

11 Geo. 2. 1737.

N^o 35.

Rex v. Inhabitants of Heddingham Sible.

Monday 14th
Nov. 1737.

ON Monday next after five Weeks from *Easter* 10 G. 2. (16th of May 1737) a Rule was made, upon the Motion of Mr. *Baldwin*, to shew Cause why the Order of Sessions and also the original Order made in this Cause for quashing the original Order made in the same Cause, for removing *William Clarke* and his Wife, *Elizabeth* and *Ann* their Children from *Heddingham Sible* to *Finsbury field* (both in *Essex*) should not be quashed; and why the last mentioned original Order should not be affirmed.

On Monday next after the Morrow of St. Martin 11 G. 2. (14th of November 1737) the original Order made in this Cause, for removing *William Clarke*, his Wife, *Elizabeth* and *Ann* their Children from *Finchingfield* to *Hedingham Sible* was quashed, on the Motion of Mr. Baldwin. And at the same Time, the *Certiorari* was quashed as to the four Orders first mentioned in the Return to it.

The same Day, a *Certiorari* was granted, on Mr. Baldwin's Motion, to remove all Orders made by the Justices of Peace for *Essex* between the Inhabitants of *Finchingfield* and the Inhabitants of *Hedingham Sible*, concerning the Settlement of *William Clarke*, his Wife, *Elizabeth Clarke* and *Ann Clarke* his Children.

N. B. There was a great Deal of Confusion about this Case: There being, in all, five Orders; and no less than seven Exceptions to them, some to one, and some to another. The first Order was an Order of two Justices to remove these Paupers from *Hedingham Sible* to *Finchingfield*. The 2d was an Order of Sessions reciting the first Order, and that *Finchingfield* had appealed to them: And they adjourned the Appeal to the next Sessions. The 3d was an Order of Sessions referring the Matter to the Opinion of the Judge of the next Assizes: But without any particular Continuance of the Appeal. The 4th Order was an Order of Sessions, made about a Year after: Which recited the Order of two Justices and the Order of Reference to the Judge, and the Judge's Opinion "that *William Clarke* had "gained a Settlement in *Hedingham Sible*;" and which discharged the Order of the two Justices, upon hearing the Judge's Opinion. The 5th Order was an Order of two Justices, reciting all the former Proceedings, and removing these Paupers from *Finchingfield* to *Hedingham Sible*.

THE COURT were of Opinion that the four first of these Orders were not properly described in the *Certiorari*; (there being a Variance in the Words "*his*" and "*their*" Children.) The 5th Order was well removed, being rightly described: But was given up as a *bad* one, being made whilst the Matter was depending before the Sessions. Therefore they quashed this last Order of two Justices, which was well removed; and quashed the *Certiorari*, as to the four other Orders which were not well removed by it, for Want of being properly described.

Q

Memorandum.

Memorandum.—

Afterwards, The four Orders were returned up, in Obedience to the 2d *Certiorari*. And Mr. *Baldwin* objected that the 3d of the before-mentioned Orders, not having continued the Appeal by a proper Adjournment, but only referring it to the Judge of Assize, without reserving the Determination to themselves after they should know his Opinion, This was a *Discontinuance* of the Appeal, and the Sessions could not take the Matter up again: And consequently, the fourth Order (which discharged the original Order) was a *bad* one. And Serjeant *Price*, who was on the other Side (for *Finchinfild*) did not pretend to support it.

LEE Lord Chief Justice—The former is only a conditional Reference to the Judge of Assize, without any Continuance or Adjournment. The latter, therefore, can't be valid.

* Friday 5th
May 1738.

* *Per Cur.*—

ORDER of Sessions (the 4th of the before-mentioned five Orders) QUASHED: And

The original ORDER (for removing the Pauper from *Heddingham Sible* to *Finchingfield*) AFFIRMED.

I have inserted this Case, merely to * prevent any Misapprehension of its having been determined upon the *Merits*. And perhaps some Gentlemen who took Notes of it, may not be displeased to see it a little cleared of the Confusion in which it must necessarily have appeared to them in Court; for Want of an accurate View of the several Orders and the several Rules made upon them, and a deliberate Comparison of one with another of them, at full Leisure to consider and adjust them.

* *V. ante*, pa. 86, "But perhaps we may hear of this Case again: It may be cited to us as an Authority, &c."

Rex v. Inhabitants of Himley.

N^o 36.

ON Wednesday next after the Octave of the Holy Trinity 11 G. 2. a Rule was made, to shew Cause why an Order of Sessions made for quashing the original Order made for removing John White, Jane his Wife, and Mary, Jane, John and Martha their Children from Himley to Handsworth, should not be quashed; and the said original Order affirmed.

N. Sessions Cases, Ed. 1750, Vol. 2. pa. 225, N^o 159. S. C. (though there called Kinley.)

I insert *this* Case merely for the same Reason that induced me to insert the last preceding one; namely, to prevent its being considered as an AUTHORITY.

The ORDERS were quashed by CONSENT.

The Court recommended it to the Parties, to consider whether they would not consent to quash them, in Order to have the Case more fully stated.

And in Consequence of that Recommendation, they afterwards did consent; and the following Rule is entered in the Rule-book:

" Friday next after the Octave of the Purification of the blessed Virgin Mary in the 11th Year of King George the Second—

" Staffordshire—	}	" BY Consent of Counsel on both Sides,
" The King against The		" it is ordered that all the Orders made
" Inhabitants of the		" in this Cause be quashed for the Insuffi-
" Parish of Himley in		" ciency thereof.
" the said County.		

" By Consent of Mr. Serjeant Hayward,

" for The Inhabitants of Himley.

" By Consent of Mr. Wirley, for The In-

" habitants of Handsworth.

" By the COURT."

N^o 27
73

Rex v. Inhabitants of Fifehead Magdalen.

Saturday 26th
Nov. 1732.

A Rule was made on Tuesday next after the Morrow of *All Souls* 11 G. 2. on the Motion of Mr. Bennett, to shew Cause why the original Order made for removing *William Trim, Ann* his Wife, *William, Robert* and *Thomas* their Children, from *West Stower* to *Fifehead Magdalen* (both in *Dorsetshire*;) and also the Order of Sessions made in Confirmation of it, should not be quashed.

The Case stated upon the Order of Sessions was this—*William Trim* the Father was born in *West Stower*, and afterwards hired himself for a Year with one *R. B.* of *Fifehead Magdalen*: With whom he lived, in Pursuance of such Hiring, for one Year, and received his Wages. The said Pauper afterwards went into the said Parish of *West Stower*, and hired himself to one *R. H.* of *West Stower*, from *Midsummer* to *Lady-day* following, at 40s. for that *Three-quarters* of a Year: And at the said *Lady-day*, he received his said Wages of 40s. and LEFT his Master's Service; and then went to his Father's House in *West Stower* aforesaid, before he and his said Master had any Discourse about continuing in his Service or making any new Contract. After he had been with his Father about ONE Hour, his Father advised him to go to his Master, and see if he could not agree with him for a Year. He accordingly went up thereupon, and met his Master, and agreed with him for a Year, at 3l. 10s. a Year; and lived with his Master but half a Year, viz. to *Michaelmas* following, in Pursuance of such second Agreement; when his Master turned him away, and paid him only half a Year's Wages, which he accepted of, and quitted his Master's Service. When he went from his said Master's House as aforesaid, he had no Clothes but what he wore, except a Shirt, which he left at his said Master's House in *West Stower* aforesaid.

The Objection made to these Orders by Mr. Bennet, supported by Serjeant *Hussey*, was, That *William Trim*, the Father, gained a good Settlement in *West Stower*, by being hired for three Quarters of a Year and serving it, and then serving half a Year, in Pursuance of a Hiring for a whole Year. For, that here was, upon the whole taken together, both a Hiring for a Year, and a Service for a Year; which is all that the Statute of 3 & 4 W. & M. c. 11. sect. 7. even after its Explanation by 8 & 9 W. 3. c. 30. sect. 4. requires: And it has been

determined not to be necessary "that both should be upon the same Contract." In Proof whereof, they cited the Cases of *Brightwell* and *West Hanning*, Hil. 1 G. 1. (which is printed in *Lucas's Reports* 10 Mod. 287.) and *The King* against *The Inhabitants of Aynhoe*, M. 1 G. 2. (which is in *Fitz-Gibbon* 3. and 2 Lord Raymond 1511.)

The Answer given to this Objection, by Mr. Gundry and Mr. Brodrep (who were of Counsel for the Orders) was, That the former of these Acts requires a Hiring for a Year; and the latter, the 8 & 9 W. 3. c. 30. sect. 4. expressly requires "that the Person shall CONTINUE AND ABIDE in the SAME Service DURING the Space of one WHOLE Year." Whereas the first Hiring, in the present Case, was only for three Quarters of a Year; and that Contract was DISCONTINUED and at an END, before the second Contract was entered upon: So that it was not a CONTINUING in the same Service. He left his Service, was his own Master, and might have hired himself to another. Nor were these two Services both under the SAME Contract. For, the first Contract was for forty Shillings for the three Quarters of a Year: The second was for 3l. 10s. for the whole Year; which is a quite different Contract.

LEE Lord Chief Justice.—I remember, the Resolution "that a Hiring for a Year and a Service for a Year were sufficient to gain a Settlement, if there were in Fact both; though all the Service should not be under the same Contract," was first come into in Lord Macclesfield's Time: And Sir Thomas Powys (who was just come into the Court) boggled very much at it. But it is now established "That a Hiring for a Year and a Service for a Year will gain a Settlement, though all the Service be not in Pursuance of the first Hiring for a Year." The REASON given by Lord Macclesfield for this Resolution, was, That the Words of the Acts of Parliament were complied with, by there being both a Hiring for a Year and also a Service for the Space of a whole Year, although the whole Service for a Year was not performed under the Hiring for a Year: And the Intention of the Acts was to prevent Persons of no Credit from intruding into Parishes. The Hiring for a Year was thought necessary, to shew that the Person had Credit enough to be hired for a Year by any Parishioner who had so much Confidence in him. And another Consideration was the Benefit received by the Parish from the Person's Labour for a whole Year. These were the Reasons of the Resolution: And this Resolution has been adhered to ever since. The only Difference between the Cases adjudged and the present Case, is, that in the Case now before us it is Stated "that AFTER the Servant had received his Wages for the three
" Quarters

* Pasch. 4 G. 1.
See Sir John
Strange's Re-
ports, pa. 90.
Rex v. Inha-
bitants of
Ivinghoe.

" Quarters of a Year, and left his Master's Service, he went to his
" Father's, was absent *about an Hour*, and then came back to his
" Master and entered into the Fresh Agreement for a Year." Now
I see *no Reason* why this should be looked upon as a DISCONTINU-
ANCE of the Service. The Servant was a little doubtful about a new
Contract: He goes to consult his Father, and in an Hour's Time re-
turns and makes a new Contract, and serves as long under it as to
make up (in the whole) a complete Service for a Year. The
SAMENESS of the CONTRACT has *not* been so strictly insisted upon,
as to make it absolutely necessary that it should be under the *very*
same BARGAIN. I remember a Case (which I argued myself) be-
tween the Inhabitants of Ivinghoe and Solebury*, where a Shepherd
was hired for a Year into Ivinghoe, by a Farmer who quitted the
Farm to another Person before the Year was out, and the Servant
served out his Year with that other Person; and was holden to be
settled in Ivinghoe; it being a *Continuance* in the same Service, un-
der the same Hiring, in the same Farm, and under the same Contract
which had never been dissolved.

Mr. Justice PAGE concurred in the same Opinion; and did
not look upon this Absence for an Hour, under the Circumstance of
going to consult his Father, to be a Discontinuance of the Service suf-
ficient to prevent a Settlement.

Mr. Justice PROBYN.—This Matter was first settled in Lord
Macclesfield's Time, as my Lord Chief Justice has mentioned: There
was much Doubt about it at first. The Reason of the Resolution
was, that these Acts were restrictive of the Liberty of the Subject,
and therefore ought to receive a *liberal* Construction. They re-
quire a Hiring for a Year, and a Service for a Year: And Both Re-
quisites were complied with.

The present Case was *not an absolute Determination* of the Service.
It was not a total Departure: He only went to his Father for an
Hour, leaving Part of his Clothes at his Master's House; and then
agreed with him for a Year, and lived on with him. So that the
Service actually continued. It is not stated to be a Departure from
the Service, with the Consent of his Master.

And it is the *SAME Service*, though performed under *two Con-
tracts*.

Mr. Justice CHAPPLE also concurred in Opinion " that this
" short Absence, under these Circumstances, was *no* Discontinuance
" of the Service." He thought this Determination to be agreeable
to the former Cases. Upon every new Contract, there is a *Sort* of a
Discontinuance.

Discontinuance. The last Day of the former Contract was the first Day of the second Service: And this was only an Hour's Absence *within* the Space of that same Day. Therefore he *remained a Servant* during the *whole* Time of the Completion of his Year.

The Court considered this *special State* of the Case as containing the *only* and the *whole* Question relating to the Settlement of the *whole* Family. And upon that Foot, they overruled an Argument "that the original Order ought to be *confirmed* as to the Settlement of the *Children*, because it had adjudged their Settlement to be in *Fifehead Magdalen*, and the special Matter stated by the Sessions concerned *only* the Father and *his* Settlement, *without* taking any Notice of the *Children*:" For, they said, they must take the Settlement of the Father to be the single Point of Doubt as to the Settlement of *all* the Family, as the Sessions had stated nothing else.

Both ORDERS QUASHED.

See my Reports, 4th Part, pa. 591, *Rex v. Inhabitants of Carverfwall*: Where the same Point is fully discussed and settled.

Hilary Term

11 Geo. 2. 1737.

Memorandum.

THERE was no Case of this Kind *determined* within the Compass of this Term.

The Rule mentioned at the End of N^o 36, between *The King* and *The Inhabitants of Himley*, was indeed made within this Term: But that was only a Rule by *Consent*, and in Order to have the Case more fully stated.

Easter Term

11 Geo. 2. 1738.

THIS Term passed also *without* any *Determination* upon the *Place of legal Settlement*: For the Rules which are before-mentioned at the End of N^o 35, in the Case of *Heddingham Sible* could not be called fo.

Trinity Term

11 & 12 Geo. 2. 1738.

N^o 38.

Rex v. Inhabitants of Martley.

THIS was an Order of Sessions confirming an original Order of two Justices made for removing *Stephen Brydges*, Musician, and his Wife and Children, from *Callow* in *Hertfordshire* to *Martley* in *Worcestershire*.

They were all Strollers and Vagrants, and had been so all their Lives, and never gained any Settlement any where: And the Places of their Births seemed very uncertain. However, the Sessions had not sufficiently stated the *Facts*: They had stated only the *Evidence*.

THE

The Court therefore recommended it to the Counsel on both Sides, to consent "that it should go down again, to be better stated." They supposed it to be the Intention of the Sessions, to state the Facts for the Opinion of this Court upon them. But this Court could not judge of the Place where the Paupers were born. Special Orders of Sessions were considered, they said, in the Nature of Special Verdicts; which are not to state the *Evidence* of the Fact, but the *Fact* itself.

The Counsel could not consent without Authority: But they afterwards had Authority to consent; and both Orders were accordingly *quashed by Consent*, without Prejudice to either Party, in Order to have the Matter more fully stated as to the Facts.

The Rule was made upon *Saturday* next after the *Octave* of the *Holy Trinity* 11 G. 2. And both Orders were thereby quashed, "without Prejudice to either of the said Parishes, in Order that the Merits of the Settlements of the said Paupers may come more fully in Judgment before this Court: And by the like Consent it is further ordered, that the Inhabitants of the Parish of *Martley* shall accept of a new original Order for the Removal of the above-mentioned *Stephen Brydges* and his Family from the said Parish of *Callow*, and not remove them back to the said Parish of *Callow* till the Merits of the said Settlement be determined.

"By *Consent* of Mr. Solicitor General for the Inhabitants of *Martley*. By *Consent* of Sir *Thomas Abney* for the Inhabitants of *Callow*."

Note—

This Case is inserted for the very same Reason as those which are numbered 35 and 36, namely, to prevent any Misapprehension of these Orders having been quashed upon the *Merits*.

THIS Term therefore likewise passed, as well as the two immediately preceding Terms, *without* any *Determination* upon the Subject.

R

Michaelmas

Michaelmas Term

12 Geo. 2. 1738.

THIS Term (like the three last preceding) passed *without* any *Determination of a Settlement-Case*: So that there was a *whole Year* together, without any Resolution of this Kind.

Hilary Term

12 Geo. 2. 1738.

N^o 39.

Rex v. Inhabitants of Norton.

Saturday 27th
Jan. 1738.

TWO Justices removed *Ellen Birmingham* the Wife of *Gerard Birmingham* from *Stretford* in *Lancashire* to *Norton* in *Derbyshire*: And, upon Appeal, the Sessions confirmed their Order.

V. Sessions Ca-
ses, Ed. 1750,
Vol. 2. pa.
323, N^o 185.
S. C.

The Order of the two Justices sets forth a Complaint by the Parish Officers of *Stretford*, "That *Ellen Birmingham* the Wife of "*Gerard Birmingham* came lately to dwell, and doth now reside in "*Stretford*, endeavouring to gain a Settlement there, having not any Ways

"Ways qualified herself so to do according to Law; and that she
 "is poor and become actually chargeable to the Inhabitants of *Stret-*
ford aforesaid:" The Justices therefore, upon Examination of the
 Matter of the said Complaint, do adjudge the same to be true. Then
 the Order goes on thus—And it appearing to us, "that the said EL-
 "LEN, before and at the Time of her Inter-marriage with the said
 "G. B. was settled at NORTON; and that the said G. B. was a Na-
 "tive of the Kingdom of Ireland; and that he left the said Ellen his
 "Wife several Years ago, and hath been absent from her ever since;
 "and that it is not known where he now is or resides; and that he hath
 "not (as appears to us) gained any legal Settlement in the Kingdom
 "of ENGLAND;" We therefore do adjudge that the last legal Settle-
 ment of the said ELLEN is in NORTON aforesaid; and do, &c.

Sir Thomas Abney moved, on Friday 24th of November 1738, to
 quash these two Orders.

His principal Objection to them was, "That the Wife's Set-
 "tlement was SUSPENDED during Coverture."

And to prove "that Coverture is a SUSPENSION of a Woman's Set-
 "tlement which she had before her Marriage," he cited two Cases,
viz. Trin. 1 G. 1. between the Parishes of Hanway and Marston;
and Trin. 9 G. 1. between the Parishes of Shadwell and St. John
Wapping.

LEE Lord Chief Justice—It is impossible to maintain this
 Order: For I take it to be a * settled Point "*That her Settlement is*
 "SUSPENDED during the Coverture; though it does not absolutely
 "cease:" And the Reason is, because the contrary Determination
 would give the Justices a Power of Divorce. The Husband is not
 here shewn to be dead: Therefore the Justices have not YET a Power
 to send her to her own last Settlement.

* See v. pa.
 124. contra.

THE THREE OTHER JUDGES (*Page, Probyn and Chapple*)
 concurred: And Mr. Justice Probyn said, The Court could not pre-
 sume the Husband to be dead, when the Sessions only state "that it
 "is not known where he is or resides."

THE COURT observed that it was a different Case, where a
 Woman had a Freehold of her own: For that would not occasion a
 Separation from her Husband; because it would be his Freehold also.

The ORDERS must be QUASHED.

And both ORDERS were QUASHED.

But see next Page.

I do not find the Case of *Shadwell* and *St. John's Wapping* in any printed Book or Manuscript: But I guess it to be the same Case which I have heard reported in the Form of a Catch, to the following Effect (if my Memory serves me right.)

A Woman having a Settlement
Married a Man with none:
The Question was, he being dead,
"If that she had, was gone."

• Then Lord
Chief Justice.

Quoth Sir *John Pratt**—"Her Settlement
"SUSPENDED did remain
"Living the Husband: But, him dead,
"It doth revive again."

CHORUS of *Puisne Judges*.

Living the Husband: But, him dead,
It doth revive again.

However, the Principle upon which that Determination and the present Determination were founded (namely, "the SUSPENSION of "the Woman's Settlement *during* her Coverture,") came afterwards to be strenuously debated and solemnly resolved and settled, in a Case of Removal of *Eleanour Kinley*, Wife of *James Kinley* an *Irish* Sailor, from *St. John's Wapping* to *St. Buttolph's* without *Bishopsgate*, in *Hilary Term* 1735, 28 G. 2. Of which Argument and Resolution I propose to give a full Account, when I shall come to it in the Progress of this Work. At present, it may suffice to say, shortly, That the unanimous Opinion of the Court was, "That "the married Woman was settled in the Place of her *own* Settlement "before Marriage; which necessarily CONTINUED till she should "gain a new one; which she never had done, and therefore her "Maiden-Settlement remained:." And they affirmed the Order which removed her to it.

Rex v. Inhabitants of Sowton.

N^o 40.

TWO Justices removed *Thomas Wills, Richard, Thomas, Mary, John* and *Alexander* his Children from *Sowton* to *Sydbury* in *Devonshire*: And upon Appeal to the Sessions, they vacate the Order of the two Justices.

*Thursday 8th
Feb. 1738.
V. Sessions Ca-
ses, Ed. 1750,
Vol. 2. pa.
211, N^o 150.
S. C.*

On *Saturday 28th October* last, a Motion was made to quash this Order of Sessions.

Case—Upon Complaint made by the Churchwardens and Overseers of *Sowton* to two Justices of Peace (*Richard Duke* and *Richard Beavis*, Esquires,) “That *Thomas Wills, R. T. M. J.* and *A.* his Children lately intruded into their said Parish and are likely to become chargeable there,” They, upon Examination and Hearing of all Parties, find the Allegation to be true, and that the said *Thomas Wills, R. T. M. J.* and *A.* his Children were last legally settled in the said Parish of *Sydbury*: Therefore they adjudge that the said *Thomas Wills, R. T. M. J.* and *A.* his Children are likely to become chargeable to the said Parish of *Sowton*, and that the said Parish of *Sydbury* is the Place of their last legal Settlement, and that they ought to be removed to the said Parish of *Sydbury*, as the Law, in that Case made and provided, directs and appoints. And then they make an Order for their Removal to *Sydbury*.

Afterwards, the Quarter-Sessions make an Order as follows, (and the Order of Sessions is signed and sealed by the two Justices only who made the first Order; though many others are named in the Caption.)

Upon hearing the Differences between the Overseers of the Poor of the Parishes of *Sowton* and *Sydbury* in this County, and on the Appeal of the said Officers of *Sydbury* from an Order lately made by *R. D.* and *R. B.* Esquires, two of his Majesty's Justices of the Peace of this County (one of the *Quorum*) for the Removal of *Thomas Wills, R. T. M. J.* and *A.* his Children, poor Persons, from the said Parish of *Sowton* to the said Parish of *Sydbury*, as the Place of their last legal Settlement; it appearing unto this Court that the said *T. W.* the Father for several Years together rented an Estate in the said Parish of *Sowton* of upwards of 100*l.* a Year, and thereby gained a legal Settlement there, for himself and his said Children; and that being considerably in Arrear for the Rent of the said Estate, his Goods were distrained for such Rent; and after such Distress, he
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the said T. W. quitted the said Estate to his Landlord; and having *an Estate in his own Right, for some Term or Terms of Years, in the said Parish of Sydbury, of 19l. 10s. a Year, in the Possession of one Greenflade as Tenant to him thereof for a Term of Years then unexpired, on or about the 2d of November last, left his said Children, (the said R. then of about the Age of 22 Years, the said T. of about the Age of 19 Years, the said M. then about 16 Years old, the said J. about 13, and the said A. about 8 Years old,) at a public Alehouse in the said Parish of Sowton, none of the said Children having then or since gained any Settlement by any Act of their own, and went into the said Parish of Sydbury; and in Consideration of 8l. paid him by his said Tenant, accepted a Surrender of the said Term, and had Possession of the said Premises in Sydbury delivered to him, and the Keys of the House thereof; and from the time of his so going into the said Parish of Sydbury, lodged at a PUBLIC HOUSE there, about half a Mile distant from the said Premises, and there tarried for about the Space of five Weeks, and in that Time looked after his said Estate and employed Workmen to make the Hedges, and cut Wood thereon and sold the same, and employed Persons to weed some Turnips; and went from the said Parish of Sydbury to the said Parish of Sowton to see his Children, and tarried there about a Week; and went again to the said Parish of Sydbury, and lodged at the said Public House, and looked after his said Estate and managed the same as aforesaid, and frequently went into the said Parish of Sowton to see his Children as aforesaid, and to other Parishes, to see his Friends, and as his Business and Occasions required; and that He was in the said Parish of Sydbury, lodging as aforesaid, from the said 2d of November till some Time in April following, and took the same for his Home or Habitation, apprehending He had no other; and that some time in the said Month of April He conveyed away his Estate and Interest in the said Premises and came back to Sowton; whereupon the said Order was made; and that he was in Sydbury more than 40 Days IN THE WHOLE, but did not tarry nor was there 40 Days SUCCESSIVELY OR AT ANY ONE TIME, but was as long Time absent, in the Time aforesaid, from the said Parish of Sydbury, as He was there; But that He had no Bedding or any Household Goods in the said House on the said Premises, nor any Stock thereon, nor paid any Taxes or Rates within that Time; and that whilst He was in the said Parish of Sydbury, He always lodged at the said Public House as a GUEST or TRAVELLER, having made no Agreement for his Diet or Lodging; and that He sometimes eat with the Family, but generally provided his own Meat, and paid only for his Drink as other Guests, the Master of the said Public House not expecting*

pecting any Thing for his Lodging and for what He did eat with the said Family; and that there was *no particular Room or Bed* in the said Public House kept or agreed to be kept for him; but that He lodged *sometimes in one Bed and sometimes in another* in the said House, as best suited the Convenience of the Family, and according as they had other Guests. And this Court [the Sessions] being of Opinion "That the said *Thomas Wills* the Father did *not*, by his *having succe*
Estate and his so being in the said Parish of Sydbury as aforesaid,
 "gain any Settlement in the said Parish for Himself or any of his
 "said Children," doth therefore vacate and make void the said Order: And the same is hereby made null and void.

R. Beavis. (LS)

R. Duke. (LS)

This Case was first argued on *Saturday 25th of November* last: But was then adjourned, in Order for the Judges to have Copies of the Order; because the Objections arose upon the State of the Case. It was now debated again.

The Counsel for the Motion argued, that *Thomas Wills's* Settlement appeared plainly to be in *Sydbury*; having come thither to live upon his *own*; and having been irremovable from it; and having resided there *more than 40 Days* in the *Whole*. And it was not necessary to reside *in* his own House; Residing in the * *Parish* is
 sufficient. * *V. ante*, pa. 108, 109.

The Counsel for the Parish of *Sydbury* urged, That this Man and his Children were once legally settled in *Sowton*. That the Order does not state what Term He had in this Estate at *Sydbury*; or how He came by it; or whether it was a beneficial Interest: (And the Court will not presume any of these Matters.) Nor is the *Manner* of his living and residing in this Parish sufficient. It is not sufficient unless the Person comes to reside *as a Parishioner*, and with a *Design* to settle and inhabit: For without that, it was insisted by them, that He could not gain a Settlement. But that was far from being this Man's Case. He was settled at *Sowton*, and left all his Family there. He did not remove with his Family, nor reside *upon* the Estate; but lodged at a Public House as a *Guest* or *Traveller*; and consequently *not* as an Inhabitant: And He did not reside there for 40 Days together; but was as long absent as present.

LEE Lord Chief Justice—The Question is, "Whether here was
 "such an Interest in *Thomas Wills* in this Estate in *Sydbury*, at the
 "Time when He went into the Parish of *Sydbury*, as that it can be

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"considered as *his own*, distinguished from a Rack-rented Estate." (For it is not mentioned as an Acquisition by Purchase: So that the Act that requires a Consideration of 30*l.* *bonâ fide* to be paid, is out of the Case.)

* *V. ante*,
N^o 4. pa. 9,
10, 11.

If He came to the Estate by *Act of Law*, the Act of 13 & 14 C. 2. c. 12. relating to Vagrants does not extend to it; nor is the *Quantum* of the Estate, in such a Case, material. * The Case of the Leasehold which was the Man's own, and was determined to make a Settlement, was of very small Value.

This Fact is not so fully set out as it might have been: For the Order does not express *how* He came to the Estate. But nevertheless I should think it a *beneficial* Interest: At least, We are not authorised to say that He came to it by *Purchase*; (which is the only Way to bring it within the Act of Parliament, which requires it to be of thirty Pounds Value.)

* *Ante*, N^o 4.

In the Case of *Sundrish*,—* It appeared to be his *own* Estate; and therefore not within the Statute of 13 & 14 C. 2. c. 12. as an Intruder into a Parish; and consequently, not subject to Removal.

* *V. ante*, pa. 40
3. and *Fortescue's Rep.*
310.

Then as to this Man's *Residence*—A Residence in any Place for 40 Days, being irremovable from thence, gains a Settlement. P. 11 *Ann.* between the Parishes of *Harrow* and *Edgware*.*

There is sufficient stated here, to shew that He had *quitted* the other Place, and came to *Sydbury* to make it his *Home and Habitation*. And by the old Law, a Man after *three* Days was looked upon as an Inhabitant: The first Day, He was a Stranger; the second, a Guest; the *third*, an *Inhabitant*.

It makes no Difference, Whether he was at his *own* House, or at *another* Person's, or at an *Alehouse*: He was 40 Days in an irremovable State, *in Sydbury*.

The only Question is Whether He *gained* a Settlement in *Sydbury*: For if He did, his *losing* his former Settlement in *Sowton* is consequential upon it, and follows *of Course*.

Upon the whole, I think it is a Settlement in *Sydbury*. And you all agree that the *Children* must go with the Father; as they have not gained any Settlement of their own, and remain Part of his Family.

THE OTHER THREE JUDGES concurred in the same Opinion.

They said the Order might indeed have been more fully stated; (*i. e.* Whether he came in by Purchase, or by Descent, Executorship, &c.) But they could not intend it to be *by Purchase under 30*l.** If they should intend it a Purchase at all, they must intend it to be for a Consideration of *more than 30*l.** For if less, it should have been shewn on the other Side.

The Facts stated are Acts of Occupation, and Evidences of Enjoyment: And 40 Days Residence in the Parish in the Whole, tho' not successive, is sufficient to gain him a Settlement.

Per Cur.

RULE to quash the ORDER of Sessions,
and CONFIRM the original ORDER.

Easter Term

12 Geo. 2. 1739.

Rex v. Inhabitants of Woolstanton.

N^o 41.

ON the second Wednesday in Hilary Term last, a Motion was made to quash an Order of Sessions made for quashing an original Order of Removal of John Malkin from Woolstanton to Uttoxeter: And on the last Day of last Term, an Objection was made to this Order of Sessions; which it is not material to specify, as it was not proceeded upon.

Thursday 17th
May 1739.

V. Sir John
Strange 1110.
S. C.

For, several Exceptions were taken to the original Order; all which were overruled, except the second: And that was as follows.

The Case appeared to be, That the Pauper was a poor Boy and a Cripple from his Birth, and was settled at Woolstanton, and was bound Apprentice to a Master at Uttoxeter by the Parish-Officers of Woolstanton, by the Assent of two Justices of the Peace: But the Boy himself was not a Party to the Indenture.

Now this second Exception was, That this Binding by the Assent of these two Justices is not sufficient: For it is not alledged "that one of them is of the QUORUM;" which by the Act of 43 Eliz. c. 2. s. 1 & 5. is absolutely necessary; the fifth Section having such

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a Reference to the four preceding Sections, as plainly to shew this to be essentially requisite.

THE COURT had no Doubt upon any of the Objections except this second. Upon this Objection it was adjourned.

It was again argued on Friday last (11th May,) when the Counsel for Woolstanton, in Answer to this second Exception, urged that it being expressly stated, "That the Indentures were allowed and approved by two Justices of the Peace," This imports that they were such Justices as the Act directs. And they cited a Case between the

* *V. Cases of* Parishes of * Newbury and St. Mary, Reading, H. 3 G. 1.

Settlements,
pa. 77. N^o
180. and *Fo-*
ley's Poor-
Laws, pa.
168.

LEE Lord Chief Justice.—The Case of Reading and Newbury is the very Point: There the Binding was *not* mentioned to be with the Consent of two Justices. Therefore I desire to look into that Case, in Order that we may act conformably to our Predecessors.

There have been Doubts in this Court about the understanding special Orders of Sessions. In Lord Parker's Time, it was said that if the Justices had not given *bad* Reasons, the Court would *intend* they did right: But I think, since I have sat here, (and I believe my Lord Hardwicke declared it to be his Opinion,) it has been holden, that upon special Orders, if the Justices do not set out sufficient to shew a Settlement, the Court can not intend it to be one.

I think a Binding is absolutely necessary. This is a Binding under the 43 Eliz. c. 2. which requires the Binding by the Church-Wardens and Overseers, to be by the Assent of two Justices of the Peace.

* *V. Sect. 5.* The * Words are—"by the Assent of *any* two Justices of the Peace *aforesaid*."

The Question is, "Whether they ought to be of the QUORUM." I think the Words of this Clause have such a Reference to the former Clauses, that they *ought*. But then, "Whether this ought necessarily to *appear*," is another Question: And I would look into it, that our Judgments may be consistent.

The Court having taken a few Days to consider it—

Lord Chief Justice LEE now delivered their Opinion.

We gave our Opinion before, as to all the Exceptions saving that of its not being alledged that one of the Justices was of the QUORUM.

The Case of Newbury and St. Mary's Reading, H. 3 G. 1. was a Determination "that the Binding, in that Case, was good so as "to make a Settlement, though no Consent of the Justices appeared upon the Order." But it appeared that the *Apprentice* had *consented*; had *executed* the Indenture; and had *served* as an Apprentice pursuant to the Binding: And therefore the Court considered it as a sufficient Binding.

The Act of 43 Eliz. c. 2. does require one of the Justices to be of the *Quorum*, throughout all the Clauses of it: And 8 & 9 W. 3. c. 30. * recites this very Clause, as *expresly requiring* one of the Justices * *V. Sec. 5.* to be of the *Quorum*, in this Case. And this Point was expresly determined in the Case of *Horley and Charlton, B. R. H. 5 G. 2.* It was stated there, expresly as this is; and the Exception was taken "that neither of the Justices *appeared* to be of the *Quorum*." It was adjourned till the *Easter Term* following; and then the Order was quashed, by * my Notes, *upon this Exception*. It was stated "that the Apprentice was bound by the Consent of two Justices:" But neither of them was *alleged* to be of the *Quorum*. I have ordered the Rules to be looked into: And they go no further than a Rule to quash *nisi Causa*; and nothing further appears to be done. But I have taken it, that it was quashed for *this Exception*.

We are of Opinion that the Order of the two Justices in the present Case be quashed, and the Order of Sessions affirmed.

The Rule entered in the Rule-Book is, That the Order of Sessions made for quashing the original Order made for removing *John Malkin* from *Woolstanton* to *Uttoxeter* be

* AFFIRMED.

* My own Note of this Case names the two Parties to be *Horley and Carlton*, and the Apprentice *Mary Danvers*. It is of *Hil. 5 G. 2.* When it was argued and adjourned. But I have no Note of it in *Easter Term*, or afterwards.

* Note, The Court pronounced this Rule wrong at first: But upon *Sir Thomas Abney's* Application, and stating the Orders, the Chief Justice pronounced it as above.

I mention this, for the Sake of those Gentlemen who might hear the Court pronounce it, and not be apprized of their subsequent Correction of it.

Trinity Term

13 Geo. 2. 1739.

Nº 42.

Rex v. Inhabitants of St. Nyott's.

Friday 29th
June 1739.

See Sir John
Strange 1116.
S. C. and also
Sessions Cases,
Ed. 1750.
Vol. 1. pa.
400. N^o 318.
S. C.

ON Monday the 14th of May last, a Motion was made to quash an Order of Sessions which quashed an original Order of two Justices made for removing one *Nicholas Penquite* from St. Nyott's to St. Cleere, (both in Cornwall.)

Upon Appeal, an Amendment in *Form* was prayed, and ordered; After which Amendment, the Sessions entered into the Merits (as the Order of Sessions sets out :) And it appeared to them that *Nicholas Penquite*, the Pauper, was born in St. Cleere; that at 10 or 11 Years of Age, he removed to St. Nyott's and lived in the Service of Mr. Cole of that Parish till he was 20, in St. Nyott's; and then lived a Year and upwards, as a hired Servant at the Wages of 5*l.* a Year, with R. Lyne in St. Nyott's. That then he removed to St. Cleere, and lived there with his Mother some Time, on a Tenement there, in Part of which he had an *Estate of Freehold and Inheritance*, and of which he was seised in Common together with his Mother and Sisters: And that after he came back to St. Cleere as aforesaid, and until he sold his Right and Interest in the said Tenement (which was about 3 Years after his Return to St. Cleere) he worked as a Day-Labourer, and lodged sometimes on his own Estate and sometimes in other Places where he worked in the said Parish of St. Cleere, and at other Times in other Parishes adjoining; and believes that he did not live and reside on his said Estate in St. Cleere or in the said Parish of St. Cleere by the Space of 40 DAYS TOGETHER at any ONE Time, between his leaving the said Roger Lyne's Service in St. Nyott's, and the said *Nicholas Penquite*'s selling his said Estate in St. Cleere.

And therefore, and for the Reasons aforesaid, and upon hearing what could be further alledged and proved upon Oath, they discharge the Order of the two Justices, upon the Merits; and order the Pauper to be conveyed, &c, to St. Nyott's.

In Support of this Motion, it was said that when a Man *resides upon his Freehold* for 40 Days, and is *irremovable* during that Time, he gains a Settlement: And that it is not necessary that he should be resident 40 Days TOGETHER. This was determined in the Case between the Parishes of *Sydbury* and *Sowton* in the last Term. [See before, N^o 40.]

Lord Chief Justice LEE—I do not see how a Man could be sent to a Place where he has a Freehold, unless he has been resident in such Place for 40 Days: Though he could not be removed from it, even within the 40 Days, if he was in the Place where it lay.

This depends upon the Statute of 13 & 14 C. 2. c. 12. which directs the sending a Pauper to the Place where he was last legally settled FOR THE SPACE OF 40 DAYS. But this Man continued, off and on, for three Years in the Parish where he had an Estate of Freehold and Inheritance: And I do not think it to be necessary that he should have resided there 40 Days TOGETHER. He was irremovable from *St. Cleere's* for above 40 Days: And that is sufficient. I agree that he could not be sent * to a Place where he has an Estate of Inheritance, UNLESS he had been settled at it, so AS to be *irremovable from it for the Space of 40 Days.*

THE THREE OTHER JUDGES agreed in Opinion, that if he has Lands of Inheritance in the Parish, it is not necessary that the Residence be UPON the Lands: It is enough if he resided IN the PARISH. And they also concurred with the Chief Justice, that the 40 Days need not be continued: A Residence of 40 Days in the Whole is sufficient.

* V. Post.
Rex v. Inhabitants of
West-Shefford,
settled accordingly; (On
Friday 8th
November
1751.)

Per Cur.

ORDER of Sessions QUASHED.

ORDER of two Justices CONFIRMED.

Rex v. The Inhabitants of East-Bridgeford.

N^o 43.

UPON Tuesday 26th of June last, a Motion was made to quash an Order of Sessions confirming an Order of two Justices made for the Removal of *Thomas Alt* from *Orston* to *East-Bridgeford* (both in *Nottinghamshire*.)

Wednesday
11th July
1739.
V. Sir John
Strange 1115.
S. C. Also
Sessions Cases,
Ed. 1750.
Vol. 2. pa.
215. N^o 151.
S. C.

The Case stated upon the Order of Sessions was, That *Thomas Alt* the Pauper was bound *Apprentice*, by Indentures dated 25th May 1727, to *William Henston* of *Orston* aforesaid *Webster*, for 9 Years, and duly served him the first four Years of the said Term at *Orston*:

And

And the said *William Henson* then dying intestate and insolvent, his *Widow* (WITHOUT any ADMINISTRATION taken, that appears to this Court,) assigned him over to *Edward George* of *Staunton* in this County *Webster*, a Certificate-Man, for the Remainder of the said Term, in Consideration of 3*l.* paid her by *George*; and, pursuant thereto, the said *Thomas Alt* lived with and served the said *George* about a Year and a half at *Staunton*; and then the said *George*, in Consideration of 40*s.* paid him by *Thomas Baggaley* of *East-Bridgefurd* aforesaid *Webster*, did, with the Consent of the said *Thomas Alt*, assign over the said *Alt*, by verbal Agreement to the said *Thomas Baggaley* for the Remainder of the said Term of nine Years; and accordingly the said *Thomas Alt* lived, and served out the Remainder of the said Term, with the said *T. Baggaley* at *East-Bridgefurd*. But it does not appear to this Court [the Sessions] that the said *Henson's* Widow was, at the Time of the said second Assignment, Party or Privy thereto: But about seven or eight Months after, she was acquainted therewith, and very well approved it. And the Court [of Sessions] being of Opinion "That the said *Thomas Alt*, by Virtue of "the said Assignment and Service at *East-Bridgefurd*, gained a Settlement in *East-Bridgefurd*," It is therefore ordered by the Court that the said Order or Warrant of Removal be, and the same is accordingly confirmed upon the said Parish of *East-Bridgefurd*.

The Objection to this Order was, That the *Widow* of the deceased Master had no legal Interest in his Apprentice: She had not taken out any *Letters of Administration*, nor had any kind of Authority to make such Assignment. And consequently, the second Assignment of him, made by her Assignee, is totally invalid and nugatory.

Upon shewing Cause now, it was said that though the *Widow* did not take out formal *Letters of Administration*, yet she appears to have been *Executor de son tort*: And an *Executor de son tort* may do legal Acts. And an Apprentice may gain a Settlement under an Assignment even by Parol only. 1 *Salk.* 68. *Castor and Aicles*; and *P. 3 G. 2. B. R. Rex v. Barnes*.

Moreover, this Apprentice must be either under the Power of the *Executor de son tort*; or be *sui juris*. Now, if the former; the Assignment is good: If the latter, then an Agreement by a Person *sui juris*, to serve for three Years and a half will bind him.

In Reply, It was agreed that an Apprentice may gain a Settlement under even a Parol Assignment. But the Master's *Widow* is not here stated to be *Executor de son tort*: And the Court will not presume that she did a Wrong. This might possibly be Evidence of her

her being Executor *de son tort*: But, at farthest, it is ONLY Evidence.

THE WHOLE COURT were unanimous this was a good Settlement in *East-Bridgeford*, where the Apprentice lived above 40 Days with *Baggaley*: Since, to this Assignment, though only a verbal one, there was the Consent of all the Parties concerned; and he lived and inhabited at *East-Bridgeford* under the Terms of the Apprenticeship, as an Apprentice bound according to the * Act of Parliament.

* *V. ante*, pa. 16, in Margin.

They observed that an Assignment of an Apprentice is not considered as a *strictly legal* Transaction; (because the *Person* of a Man is not strictly and legally assignable:) But it has been an equitable Construction, "That where an Apprentice has lived 40 Days under an Assignment, he shall thereby gain a Settlement, because of the Consent."

The Statute of 13 & 14 C. 2. cap. 12. sect. 1. requires the sending to the Place where he lived as Apprentice 40 Days. The Act of 3 & 4 W. & M. cap. 11. sect. 8. only requires a Binding.

Per Cur.

Both the ORDERS were AFFIRMED.

V. Ante, N^o 5. and the former Cases therein cited, as well as the subsequent Cases referred to at the End of it, pa. 16.

Michaelmas

Michaelmas Term

13 Geo. 2. 1739.

N^o 44.

Rex v. Inhabitants of Coln St. Aldwin's.

Friday 16th
Nov. 1739.

ON Friday the 6th of July last, a Motion was made by Mr. Yate, to quash an Order of Sessions confirming an Order of two Justices for the Removal of *Elizabeth Hayes* the younger, otherwise *Turin*, (who was an Infant Bastard-Child of about six Years of Age,) from *Highbworth* in *Wils* to *Cown St. Allen's*, otherwise *Coln St. Aldwin's* in *Gloucestershire*.

1st Exception. The Order for Removal is made by two Justices of *Wiltshire*; and is grounded upon the Examination of the Mother of the Child removed, taken before two Justices of *Middlesex*: Which is not sufficient, though verified by an Affidavit "that it was duly taken."

2^d. It is not even said that it was taken *within the County of Middlesex*.

3^d. A Nurse-Child of six Years old ought to have been sent *with* its Mother; not to a *different Place* from that where the Mother is.

4th. There was another Order depending at the same Time, for the Removal of this same Child from *Coln* to *Highbworth*. It was made on the 21st of *April* 1737; and was confirmed, on Appeal, in *July* following: After which, *viz.* in *December* 1737, the present original Order of the two Justices was made.

N. B. The Justices adjudged it to be a Bastard-Child, born in *Cown St. Allen's*, whose putative Father was dead.

The Answers given to these Exceptions, by the Counsel for the Orders, were

To the first and second — A Certificate of one Justice is to be regarded by another Justice. But they do not rest upon that Certificate only: For they themselves adjudge "that it appears to them upon due Examination and Inquiry, upon Oath, into the Pre-misses."

3^d. The

3d. The Mother, after her first Examination, run away: And it is not known what is become of her: And the Child, being a Bastard, was very properly sent to the Place of its Birth.

4th. The Order of Sessions, confirming the Order for the Removal of this Child from *Coln* to *Highbury*, was quashed here: Therefore that did not stand in the Way of a second Order of Removal to *Coln*.

Lord Chief Justice LEE—That does not appear: As it stands, it seems to conclude you.

The Exception to the Evidence has a great deal of Weight in it. Certainly it is not necessary for the Justices to set forth the Evidence upon which they ground their Adjudication. But if it appears that they have received and regarded Evidence which they ought not to have received, it will vitiate the Order. Now it is plain that these *Wiltshire*-Justices have grounded their Adjudication upon the Examination transmitted to them from the *Middlesex*-Justices. What they examined and inquired into upon Oath, was the Conveyance of the Child out of one Parish into the other. Now the Examination on which they relied, being taken by two Justices of another County; and the Person examined by those Justices remaining still alive, for ought that appears to the contrary; it is plain, this Deposition ought not to have been received as Evidence to ground their Adjudication upon; though it might perhaps have been used as concurring Evidence.

I have often heard it declared here (and by Mr. Justice Eyre particularly) “that Both Justices ought to be present at the *viva voce* Examination of the Witnesses.”

Mr. Justice PAGE—I remember a Case where it was determined that Both Justices must be present; and that it is not sufficient for one Justice to examine the Matter and transmit it to the other, and that other to sign the Order without examining into the Matter himself.

If the Woman was alive, she ought to have been examined by these Justices themselves. But even supposing that she was not alive, yet still I do not know that they could regard that *Middlesex* Examination. It does not appear that the *Middlesex*-Justices had any Jurisdiction: For no Complaint appears to have been made before them; and if not, they could have no Jurisdiction.

The Justices having set forth (though they were not bound to do it) the Grounds of their Adjudication, the Court will judge of the Sufficiency of them.

(Mr. Justice PROBYN was not in Court.)

T

Mr.

Mr. Justice CHAPPLE concurred in Opinion. He agreed to what Mr. Justice Page had last said: And he remarked (as the Lord Chief Justice had before done) that the Justices found this their Adjudication of the *Place of Settlement*, wholly upon the *transmitted Examination* (which they ought not to have admitted at all.) The other Evidence related only to the coming into the Parish.

Per Cur.

Both ORDERS QUASHED.

N^o 45.

Rex v. Inhabitants of Ufculm.

Wednesday
28th Novem.
1739.

ON Tuesday the 6th of this Month, a Motion was made by Mr. Hollings, to quash an Order of Removal of *Richard Minify*, *Joan* his Wife, and *Jane*, *Richard* and *Henry* their Children, from *Cliftbydon* to *Ufculm* in *Devonshire*, and an Order of Sessions confirming it.

He made three Objections to the original Order.
1st Objection. The Direction does not mention in *what County* the Parish of *Cliftbydon* lies.

2^d. The *Ages* of the Children are not mentioned.

3^d. It is said the Paupers are likely to become chargeable; but does not say to *what Parish*.

Sir *Thomas Abney* now shewed Cause.

1st. "*Devon*" is in the *Margin*: And the Order is directed to the Church-Wardens and Overseers of *Cliftbydon*, and to the Church-Wardens and Overseers of *Ufculm*, in the said County: And it appears that the Justices are Justices of the County of *Devon*. The County being in the *Margin* is sufficient in an Order.

2^d. The Objection to the Omission of specifying the *Ages* of the Children, has been often over-ruled, where it is expressly adjudged to be the Settlement of the Children themselves. Now here it is adjudged that "*their*" last legal Settlement is in the Parish of *Ufculm*.

3^d. The Adjudication is in this Form—"And whereas upon due Examination and Inquiry made into the Premises, it appears to us and we accordingly adjudge that the said, &c, are likely to become chargeable." It is not necessary to add, to what Parish; because it is an Order made upon the Complaint of the Church-Wardens and Overseers of *Cliftbydon* "that they were become chargeable to THAT Parish."

Ma

Mr. *Hollings* in Reply—

3d Exception—The Justices cannot remove Persons, *unless* they are likely to become chargeable to the Parish from whence they remove them. *Salk.* 491. Between the Inhabitants of *Saddlecomb* and *Burwash*. Here, they do not adjudge that they are likely to “become chargeable to the Parish of *Glisthydon*.” Nor do they even adjudge the Complaint to be true.

LORD CHIEF JUSTICE LEE was somewhat doubtful, as to the first Exception, Whether it was sufficiently answered, or not.

Mr. Justice PAGE said, he took it to be settled that the County in the Margin is sufficient, if there be a sufficient Reference to it. [*V. ante*, N^o 12. pa. 43. so settled.]

LORD CHIEF JUSTICE LEE.

As to the second Objection—The Distinction is right, That if it be expressly adjudged to be the Settlement of the Children themselves, there is no Need to set out their Ages: Otherwise, it is necessary, in consequential Settlements. [*V. ante*, N^o 26. pa. 89.]

As to the third Exception—He held, (and the three other Judges concurred with him,) “that it was fatal.”

A Complaint must appear, “of the Paupers being likely to be-
“come chargeable to the Parish from whence removed;” and there must be an Adjudication of the Truth of it: For the Justices have no Authority without such Complaint and likewise an Adjudication of the Truth of it. We can not support an Order by Implication. There is no Necessity indeed for any particular Sett or Form of Words: But there must be an Adjudication of it in some Words or other. Now here is no Adjudication of it at all. Therefore the Order must be quashed. [*V. ante*, N^o 12. pa. 43. accord.]

Per Cur.

RULE MADE ABSOLUTE,
For quashing both the ORDERS.

Rex v. Inhabitants of Netherton in the Parish of N^o 46.
Cropthorn.

A Motion was made on Saturday the 17th of this Month, to The same
quash an Order of Sessions confirming an Order of two Justices 28th Novem.
made for removing Benjamin Hunt and Jane his Wife from the 1739.
Township of *Hoblench* in the Parish of *Gladbury* in *Worcestershire*, to
Netherton in the Parish of *Cropthorn* in the said County.

T 2

1st Ex-

1st Exception—The Sessions have amended Matters *not in their Power to amend*. They order the Words—“The Church-Wardens and Overseers of the Poor of the Parish of *Hobbs* to be struck out;” And the Words—“Overseers of the Poor of the Township of *Hobbs* in the Parish of *Fladbury*”—to be inserted instead thereof throughout the Order of the two Justices. *Finch's Law* 86. Co. Lit. 115. b. 2 Ventr. 31. The Act of 5 Geo. 2. c. 22. only enables the Justices at Sessions to amend Matters of Form. But this is much more than Form only.

2ndly, They have awarded Costs: Whereas, by the Act, none are payable.

3^dly, There is no Adjudication in the original Order, “That the Paupers are likely to become chargeable to the Parish from whence they were removed.”

The Counsel, who was to have now shewn Cause, said, he thought it defensible upon the two former Objections: But he gave it up upon the 3rd. On which Exception

* See the last Case, No 45. pa. 139. S.P.

Both Orders were QUASHED.

Hilary Term

13 Geo. 2. 1739.

No 47.

Rex v. Inhabitants of Southwold.

Tuesday 12th
Feb. 1739.
V. Sir John
Strange 1127.

ON Tuesday the 27th of November last, a Motion was made to quash an Order of Sessions which vacated an Order of two Justices for the Removal of *James Hayes, Elizabeth his Wife, and Meadow, James, Thomas, and Elizabeth, their Children* from *Southwold* to *Yoxford*.

The Order of Sessions was thus—The Inhabitants of the Parish of *Xoxford* in this County moving this Court, by way of Appeal, to be relieved against an Order made by T. C. Esq; and T. N. Gent. two of his said Majesty's Justices of Peace for the Corporation of *Southwold* aforesaid in the said County, for the Removal of *James Hayes*, *Elizabeth* his Wife, and *Meadow*, *James*, *Thomas*, and *Elizabeth*, their Children, from the Parish of *Southwold* aforesaid to the Parish of *Xoxford* aforesaid as the Place of their last legal Settlement: Upon hearing Counsel on either Side, this Court doth discharge the Order made for Removal of the said *James Hayes*, his Wife and Family as aforesaid; reserving, in the mean Time, Liberty to the Parish of *Southwold* to draw up a special Order, till the next Session, to be settled by Counsel on both Sides and the Justices present. And this is agreed and consented to, by the Counsel on both Sides. And in the mean time, the Pauper, his Wife and Family are to remain in the Parish of *Southwold* aforesaid. And it appearing to this Court, that after the said *James Hayes* had gained a legal Settlement at the Parish of *Xoxford* aforesaid, he hired a House in *Southwold*, by Agreement in Writing in the Words following, *to wit*—"Memorandum of an Agreement between *John Block* of *Hinton* of the one Part, and *James Hayes* of *Xoxford* on the other Part, witnesseth, That *John Block* aforesaid doth lett unto *James Hayes* all the House belonging to him being in *Southwold* in the County of *Suffolk*, at the yearly Rent of 10*l.* with all the Land thereunto belonging. The said *John Block* is to build a Stable convenient for the House, also a Lading for Washing, and to sink a Cellar, and to put up a Stove-Chimney in the little Room. All this to be done between this and *Michaelmas* next. The said *Block* is to bring as many Flags as will cover the said Lands, in order to make it a good convenient Bowling-ground. He, at the Charge of bringing and groundage: And the said *James Hayes* at the cutting and laying. The said *J. H.* to have the House with the Premises for three Years, or five, as he shall think proper; and to come in at *Midsummer* next. The Rent to be paid Half-yearly; *viz.* 5*l.* at *Lady-day*, and the other Half at *Michaelmas*: And all the Rent to be cleared off at leaving of the Premises. In Witness whereof we have set our Hands this 19th Day of *June* 1738. The said *J. B.* to be at the Charge of a handsome Sign, and to get the House licensed: But the said *J. H.* to be at the Charge of the Licence. *John Block*, *James Hayes*. Witness, *Benjamin Curtis*, *John Petre*." Which said House and Premises before, and at the Time of making the Articles above recited, were never worth nor lett for above 6*l.* 10*s.* per

per Annum: And none of the Articles abovesaid were performed, by which the Landlord MIGHT HAVE MADE IT worth 10*l.* a Year. And the said James Hays did not lodge one Night in the House: But his Wife and Children lodged there five Nights, and no longer; and his Goods were in the said House above 40 Days, until they were taken and sold upon an Execution. And that his Wife and Family continued in the said Town, and kept the Key of the House till Michaelmas. This Court [the Sessions] is of Opinion, "That by the Hiring and Facts aforesaid, the said James Hayes did gain Settlement in the Parish of Southwold aforesaid;" and doth accordingly discharge the said Order.

It was objected to this Order of Sessions—1st, That it don't appear when it was made. 2^{dly}, That the Sessions are wrong in their Opinion: For, no Settlement was gained in Southwold; as the Tenement was not of ten Pounds *per Annum* Value, nor did the Pauper ever reside in it.

Rule to shew Cause.

Upon shewing Cause why this Order of Sessions should not be quashed, (on Friday the 25th of January last,) three Exceptions were made to the original Order of the two Justices: viz.

1st, It does not appear how the Man gained a Settlement in Roxford.

2^{dly}, The Ages of the Children are not stated. *M. 11 G. 1. Rex v. The Inhabitants of Trinity in Chester.*

3^{dly}, There is no Oath of their Likelihood to become chargeable. It is only "upon Complaint of the Church-wardens and Overseers;" (not saying that it was founded "on Oath.")

Lord Chief Justice LEE—This Order of Sessions is returned in an unusual Manner. It does not appear whether their Adjudication was or was not made at the same Sessions at which the Liberty was reserved to the Parish of Southwold to state a Case: For no other Court appears upon the Face of the Order to have been holden. But I think we may very well take this to be a State of the Case then before them: And this Court must determine upon the Facts stated.

The Act of 13, 14 C. 2. c. 12. gives Power to the Justices to remove a Person coming to settle in a Tenement under 10*l.* a Year Value.—Now here the Justices have expressly returned as a Fact, "That this Tenement was only of the Value of 6*l.* 10*s.* a Year." Indeed they say that if the agreed Improvement had been made, it MIGHT have been worth 10*l.* a Year. But even that is meerly conjectural: The Fact returned is, "That it is only worth 6*l.* 10*s.*"

As

As to the not stating the Ages of *the Children*—It is expressly adjudged to be “the Settlement of the Children: Therefore their Ages are not necessary to be mentioned.”*

* *v. ante*, No. 26. pa. 89. and No. 45. pa. 138, 139.

As to the Complaint not appearing to *be upon Oath*—It is said, “upon *due* Proof made thereof—We do adjudge, &c.” which is enough.†

Mr. J. PAGE looked upon this State of the Case as meant to be the true one; and said, he was clear, as to the Merits, “That the material Thing was the *Value* of the Tenement, not the Rent reserved; and he was as clear, “That this was not a Tenement of 10 *l.* a Year:” For both at the Time of the Agreement, and also at the Time of the Removal, the Value of it was but 6 *l.* 10, a Year. And the mere *Covenant* to build is not sufficient to bring it within the Intent of the Act.

† *v. post. Rex v. Inhabitants of Standish cum Langtree*, 12th June 1740.

The other two Judges, Mr. Justice *Probyn*, and Mr. Justice *Chaple*, concurred in the Opinion, “That this was *not* a Tenement of 10 *l.* a Year Value;” and “that the Value must be estimated as at the Time of the Letting, or at least of the Removal;” and the mere *Covenant* “to make Improvements *which never were made*,” could not alter the Case.”

The Court therefore declared against the Order of Sessions, and would have quashed it.

But the Counsel for supporting it added a *new* Exception to the original Order of the two Justices; *viz.* That in the Margin it was “*Town of Southwold in Suffolk*,” (but not named to be a Corporation;) and the Justices are only named in the Body of the Order to be “Justices of the said *Corporation*.”

THE COURT thought this Objection of Weight: And, that they might determine upon both Orders together, they put it off for a few Days.

The Answer now given to this Objection, by the Counsel for *Southwold*, was, That the Court will take Notice of Corporation-Justices, as well as County-Justices; because it appears by 43 *Eliz.* that there *are* such Justices as Corporation-Justices.

The Word “*Corporation*,” in the Body of the Order, is the same as if it had been expressed “*Town Corporate*:” For if it was to be turned into *Latin*, it must be “*dictæ villæ corporatæ*,” and not “*Corporationis*,” or “*Corporis Corporati*.” And the Reason is because there is no such Thing as a Justice of a *Body Corporate*; but of a *Town Corporate*, there is. And the Court, in this Case, will intend the *Town of Southwold*, and the *Corporation of Southwold* to be the same.

In the Case of *The King and Messenger*, 8 Geo. 1. B. R. the Court held, "That they ought to take Notice of the Tower-Liberty to be a distinct Liberty, and out of the County at large, and that it had Justices of its own."

Lord Chief Justice LEE—Here it is in the Margin of the Order "*Town of Southwold*:" And the Order is made on Complaint to "two Justices of the *said Corporation*." The Question therefore is, What is the true Construction of the Words "*said Corporation*;" whether it may not mean "the *said corporate Town*." I think it may here be so understood.

Mr. J. PAGE thought it would be too strict, if the Court should refuse understanding the Words "*said Corporation*", to mean the *said Corporate-Town*.

Mr. J. PROBYN—The Question is, Whether it be not a necessary Intendment, that the *Town in the Margin*, and the *Corporation in the Body* of this Order, are the same." "*Said Corporation*," if turned into *Latin*, would be "the *said Town-Corporate*." I am inclined to think it will do.

Mr. J. CHAPPLE thought they imported the same Thing: The Word "*said*" ties it up to be the same.

Per Cur.

Sessions ORDER QUASHED:

Original ORDER CONFIRMED.

Easter

Easter Term

13 Geo. 2. 1740.

Rex v. Inhabitants of North Oworm.

Nº 48.

ON Friday the 25th of January last, a Motion was made by Sir Thomas Abney, to quash an Order of Sessions which discharged an Order of two Justices made for the Removal of Samuel Spencer from North-Oworm to the Township of Ovenden, both in the West Riding of Yorkshire.

Saturday 17th
May 1740.
V. Sir John
Strange 1132.
S. C. and
Sessions-Cases,
Ed. 1750.
Vol. 2. pa.
196. No. 144.

The Case stated was thus.—S. Spencer, the Father of S. S. the Person removed, gained his last legal Settlement in Ovenden; and during such Settlement had a Son born there, named Samuel, being the Person removed. And afterwards, about the Year 1729, the Mother of the said S. S. (whose Father was then dead) proposed to put him an Apprentice to A. Scot, then an Inhabitant in North-Oworm, who refused to take him, because he wanted Cloaths; but proposed to take him, if they would clothe him, or give him Money to clothe him withal. The Grandfather said he would do so: And it was thereupon agreed, “that the Grandfather should pay 30 s. to the Master to clothe the Boy withal; and that the Master should take him as an Apprentice.” And in Pursuance of that Agreement, the Master did lay out 30 s. in Clothing for the Boy. And afterwards an Indenture was drawn and executed by the said A. Scot the Master, and S. S. the Apprentice: And the 30 s. agreed to be given and laid out as aforesaid was PAID by the Grandfather to the said Master. And in Consequence thereof, the said Apprentice served his said Master under such Indenture and Agreement for six Years in North-Oworm. And in the said Indenture a Covenant was made and mentioned, “for the said Master to find Cloaths for the said Apprentice during all the said Term;” but in the said Indenture no Mention was made of the said Sum of 30 s. so agreed to be given as aforesaid; neither was any Duty paid for the same; nor was the said Indenture stampd according

* V. c. 9.
§ 39.

according to the Statute of 8 Queen Anne*. Therefore upon Consideration had of the Premises, the Sessions adjudged the Place of the last legal Settlement of the said Samuel Spencer to be at North-Owram; and do thereupon discharge the said Order of Removal.

† V. § 35.

† V. ante
pa. 92. & 96.
(in No. 28)

Two Exceptions were taken by Sir Thomas Abney to this Order of Sessions: 1st, That the Sum given with him as an Apprentice is not inserted in the Indenture, in Words at Length; † 2^{dly}, That the Indenture is not stampd. In Support of this latter Objection, he cited the Case of *Cuerden* and *Leyland*†. A Rule was made to shew Cause why the Order of Session should not be quashed.

On the last Day of last Term, a Motion was made to enlarge this Rule; and for a Rule upon the Clerk of the Peace, to shew Cause why he should not amend the Return to the *Certiorari* at his own Expence; he having neglected and refused to return up the original Order: Which Rule was accordingly granted.

Lord Chief Justice LEE said, the same was done in the Case of one *Lodge*, Clerk of the Peace for *Norwich*.

On the second Day of the present Term, this Rule on the Clerk of the Peace was made absolute, without Defence; and the principal Rule was enlarged.

Mr. *Strange*, Solicitor General, now shewed Cause why the Order of Sessions should not be quashed.

He allowed the Case of *Cuerden* and *Leyland*, where a Sum of Money was paid to the Master as a *Præmium*. But *this* is no *Præmium* to the Master, but advanced for clothing the Boy; and by no Means to be considered as within the Act of 8 Ann.

Sir Thomas Abney, on the other Side, relied on the Case of *Cuerden* v. *Leyland*, in Support of the second Exception; from which it appears, as he insisted, that the Indenture ought to be stampd; or else it is absolutely void to all Intents and Purposes whatsoever.

He also excepted to the Caption; for that it is not said *before whom* the original Sessions were holden; but only before whom the *ad-journed* Sessions were holden.

Lord Chief Justice LEE said, the only Question was, whether this 30 s. be such a Sum as ought to be inserted in the Indenture, by the Statute of 8 Queen Ann. c. 9.

In the Case of *Cuerden* and *Leyland*, the Court held themselves bound to consider the Service and Binding as ineffectual and *absolutely* VOID to all Intents and Purposes, because the Indenture was *not stampd*: But the *not inserting in Words at * Length* the full Sum re-

* N. B. The 39th Section (which makes the Indenture absolutely void) only requires a true Insertion of the full Sum, &c; without adding,—"in Words at Length."

ceived,

ceived, or directly or indirectly given contracted or agreed for, subjects the Master or Mistress to a *Forfeiture*, but does *not make the Indenture void*.

However, upon the State of this Case, the Master is to be looked upon in no other Condition than if he had been a Stranger employed as an *Agent* by the Grandfather to clothe the Boy: And the Grandfather was obliged to repay him, and did repay him. This Clothing was *before* the Binding: So that it amounts to no more than putting a Boy Apprentice ready clothed. It is not a *Præmium* received by the Master. The Statute means Money given directly or indirectly for the *Benefit* of the Master. But he has *no Benefit* from this 30 s. He was not obliged to clothe the Boy *before* he was his Apprentice: And this Agreement was executed before the Indenture was sealed.

As to the Caption—It is “ at a General Quarter Sessions, &c, “ holden at N. &c, and from thence continued by Adjournment to “ such a Time at such a Place, before such and such Justices.” It is all connected and coupled together, and must be taken to be begun and continued before the same Justices: We can’t presume that they were different Persons.

THE THREE OTHER JUDGES were of the same Opinion, and gave the same Reasons: Which it is therefore unnecessary to repeat.

Per Cur.

THE RULE for quashing the ORDER of SESSIONS *must be* DISCHARGED.

N. B. The Court do not, in such a Case as this, pronounce any Reversal of the Order of the two Justices; because that consequently *remains* quashed, if the Rule for quashing the Order of Sessions be discharged.

ORDER of SESSIONS AFFIRMED.

Rex v. Inhabitants of Hasfield.

Nº 49.

ON Monday the 11th of February last, a Motion was made by Monday 19th
Mr. Yates, to quash an Order of Sessions confirming an Order May 1740.
of two Justices for the Removal of Benjamin Burford, an Infant v. Sir John
aged about eight Years, and Mary Burford, aged about six Years, Strange 1131.
the Son and Daughter of Jonathan Burford, deceased, from Tirley to S. C.
Hasfield, (both in Gloucestershire.)

CASE—*Jonathan Burford*, the Father of the said *B.* and *M.* the Paupers, about 20 Years since, intermarried with one *Mary Potter*, by whom he had the said *Benjamin* and *Mary*, his only Children: Which *Mary* the Wife was, at the Time of such her Marriage, seised in Fee of a Messuage or Tenement, Garden and Orchard, and about one Acre and a Half of Meadow, in *Tirley*, of the yearly Value of 4 *l.* or thereabouts. That he and his said Wife, for many Years after the said Marriage, and to the Death of his said Wife, lived together in the said Parish of *Tirley*, and upon the said Freehold Estate; and that the said *B.* and *M.* the Children, were born at *Tirley*, during such their Father and Mother's Residence in the said Parish of *Tirley* on their said Estate. That after the Death of *Mary* the Wife, the said Estate descended to the said *Benjamin*, as her Son and Heir, subject to his said Father's Tenancy by Curtesy. After the Death of the Wife, the Husband continued, with his said Children, on the said Estate at *Tirley* aforesaid; and afterwards took an Estate of about 30 *l.* a Year, in the said Parish of *Hasfield*, and removed thither with his said two Children, where he resided for one Year and a Half together, with the said two Children, and then died; on whose Death the said *Benjamin*, who was then about six Years and a Half old, became SEISED IN FEE of the said Estate at *TIRLEY*. And he and the said *Mary* his Sister, being in the said Parish of *Tirley*, with their Grandmother, their nearest Relation, above 40 Days, were lately removed from thence to *Hasfield* aforesaid; the said *Benjamin* being about eight Years of Age, and the said *Mary* about six Years of Age.

It was objected, on Behalf of the Parish of *Hasfield*, that neither of these two Children were liable to be removed from *Tirley*; the Boy having an Estate of Inheritance there; and the Girl being there with her Grandmother, for Nurture.

Upon shewing Cause now, Mr. *Wheat* endeavoured to support the Order, as to both the Children. But,

Lord Chief Justice LEE made a Difference between the Cases of the two Children. *Benjamin* is seised in Fee of an Estate in *Tirley*: And it is not material *quo animo* he came into that Parish; or how long he has been in it. It is not a Case within the Statute of 13 14 C. 2. c. 12. because having an Estate of his own in the Parish, he is not removable FROM it. It is not like the Case where a Man is to gain a Settlement by residing 40 Days in a Place from whence he is irremovable. This last was the Case of *Sowton* and *Sydbury*, * where the Difficulty was upon the Residence 40 Days in a Place where

where the Man was to gain a Settlement in Respect of his Freehold. But I think it clear, that this *Benjamin B.* could NOT be removed FROM his Freehold.

Mary's Case depends only upon the Tenderness of her Years. For she had gained a Settlement at *Hasfield* as Part of her Father's Family; and consequently had discharged her former Settlement at *Tirley*.

I do not know that the Case of *Nurture* has been extended further than to the Case of a *Mother*, whose natural Assistance is to be expected: But the Case is not the same as to the Grandmother. Tho' the Grandmother indeed is liable to allow towards the Maintenance of her Grandchild, if able; yet that is only in Discharge of the Child's Parish, to which the Child is burthensome: But it is not necessary that the Child should be with her in her own Parish, for *Nurture*.

Therefore the Order is good as to the Daughter.

Mr. J. PROBYN and Mr. J. CHAPPLE (*Page absent*) concurred, that *Benjamin* could not be removed from the Parish where he had a *Freehold*: And they concurred likewise with his Lordship as to the Girl.

Per Cur.

ORDER QUASHED as to the Removal of *Benjamin*:

CONFIRMED as to the Removal of *Mary*.

Trinity Term

13 & 14 Geo. 2. 1740.

No. 50. Rex v. The Inhabitants of Standish with Langtree.

Thursday 12th
June 1740.

ON Friday 16th of May last, a Motion was made by Mr. Clayton, to quash an Order of Sessions confirming an Order of two Justices made for the Removal of *Mary Kennedy*, otherwise *Keys*, and *Luke* her Child, from the Township of *Upbolland*, in the Parish of *Wigan*, to the Township of *Standish with Langtree*, in *Lancashire*.

1st Objection. It does not appear, that either of the two Justices was of the *Quorum*: It is only—" *And whereof*, in and for the said "County."

2^d Objection. It does not appear, whether she is a married Woman.

3^d Objection. The *Complaint* don't appear to have been made on *Oath*.

In Answer to the first, *Regina v. Inhabitants of Long-Bolton*, M. 7 *Anne* was cited; where "*Quorum unus*" was holden sufficient.

To the second it was said, That the Justices have adjudged her to be settled in *Standish cum Langree*; and the Court will intend her a *single* Woman.

To the third—No Oath is necessary.

IN REPLY, The Case of *Rex v. The Inhabitants of Great-Mitton*, in *Yorkshire*, M. 11 G. 2. was cited in Support of the first Objection: Which was exactly the same Case with the present.*

THE COURT unanimously quashed the Orders, upon the *first* Exception. As to the third Objection,—They said, that the Statute does not require a *Complaint upon Oath*.

BOTH ORDERS QUASHED.

* N. B. I omitted to insert it, because I thought it so very plain a Case: And so the Court treated it.

Rex v. The Inhabitants of East-Knoyle.

No. 51.

ON Saturday the 10th of May last, a Motion was made by Mr. The same Gundry, to quash an Order of Sessions confirming an Order of Day. two Justices made for the Removal of *Anne Bowles*, the Wife of *James Bowles*, and *George* their Son aged five Weeks, from *Teffont Magna* to *East Knoyle* in *Wiltshire*, as the last legal Place of Settlement of the said *James Bowles* the Husband, who was run away and had left his said Wife and Child in *Teffont Magna*.

The Sessions-Order thus stated the Case—And it *appearing to this Court* upon the Evidence now given, that the said *James Bowles* was bound an Apprentice by Indentures to one *William Wilkins* of the Parish of *East-Knoyle* aforesaid Cordwainer (which is above 50 Miles from *London*;) and that he served three Years at *East-Knoyle* aforesaid under the said Apprenticeship; at which Time the said *William Wilkins*, the Master, died; and that the Sum of 5*l.* (being the full Consideration-Money) was paid by his Father with the said Apprentice for such his Binding: But the Indentures of Apprenticeship were not produced; neither did it appear to this Court whether the Duty of 6*d.* in the Pound directed to be paid by the Statute made in the 8th Year of the Reign of the late Queen *Anne*, c. 9. was paid, or whether the said Indentures were stampd, as the said Act requires.

Objection—It appears that the Justices have admitted and gone upon Evidence which was not legal. They have admitted parol Evidence of an Indenture; which they state not to have been produced, and have not given any Reason why it was not produced; nor did it appear to them that the Duty was paid, or whether the Indentures were stampd according to 8 *Ann. cap. 9.*

But Mr. J. PAGE and Mr. J. CHAPPLE (the only two Judges in Court) over-ruled the Objection, and refused to make a Rule to shew Cause. For it is stated that it appeared to THEM that he was bound an Apprentice, &c: And it is not necessary that this Evidence should appear to us. Perhaps the Indenture was lost:—And in that Case, could the Justices receive no other Evidence of the Binding? And as to the Duty and the Stamp—they do not say the Duty was not paid; or that the Indenture was not stampd.

The Motion was DENIED.

A Motion was now made to confirm the Orders, unless Cause was shewn before the End of the Term.

RULE—That the Orders be affirmed, unless Cause be shewn to the contrary before the End of this Term.

Rex

No. 52.

Rex v. The Inhabitants of King's Norton.

Thursday 19th
June 1740.
V. Sir John
Strange 1139.
S. C.

* He was
knighted on
the Monday
preceding
(12th May
1740;) being
then his Ma-
jesty's Solici-
tor General,
and Recorder
of London.

ON Saturday the 17th of May last, a Motion was made by * Sir John Strange, to quash an Order of Sessions reversing an Order of two Justices made for the Removal of Mary Calcot from King's Norton in Worcestershire to Cambden in Gloucestershire.

The Order of Sessions states, that it appeared to them upon the Examination of the said M. C. taken upon her Oath in Court, that she was upon *All Saints Day* in the Year of our Lord 1735, hired with John Ellis of Cambden, Chapman, for a Year, to spin Wick-Yarn, at the Rate of 1s. 6d. a Stone; and that she was to provide herself with Meat, Drink, Washing and Lodging where she pleased: And that she spun for him the whole Year; and lodged in her said Master's House, and boarded with him at Cambden; and received 1s. 6d. a Stone for her Work, allowing her Master 2s. a Week for her Lodging and Board. And upon her Examination she said that by her said Contract as aforesaid SHE THOUGHT she was not at Liberty to work for any OTHER Master: But SHE THOUGHT that she was at Liberty to PLAY or be ABSENT from her Work, as long as she pleased; being to be paid at a CERTAIN RATE for her Work done. Wherefore it is the Opinion of the Sessions "that the said Hiring and Service aforesaid was not sufficient to gain the said Mary Calcot a Settlement in the Parish of Cambden: And accordingly they reverse the Order of Removal."

RULE to shew CAUSE.

On shewing Cause, the only Question was, Whether this Hiring and Service was sufficient to gain her a Settlement in Cambden.

Lord Chief Justice LEE thought it plainly a good Settlement in Cambden. For here is a Hiring for a Year, and a continuing in the same Service for a Year: Which are undoubtedly sufficient to gain a Settlement.

Mr. J. PAGE and Mr. J. PROBYN were of the same Opinion, for the same Reason.

And they all agreed that it was not material WHAT the Service was.

M. J. CHAPPLE also concurred; and observed that the Liberty she thought she had, of playing and being absent as long as she pleased, depended upon her own Apprehension only; but was no Part of the Contract.

Per

Per Cur. unanimously and clearly,

ORDER of *Sessions* QUASHED.

ORDER of two *Justices* AFFIRMED.

V. Post. N^o *Rex v. Inhabitants of St. Peter's, Dorchester.*
M. 1763. and see the fourth Part of my Reports, *Rex v.*
Inhabitants of Macclesfield, and the Cases there cited, in
Page 565.

Michaelmas Term

14 Geo. 2. 1740.

Rex v. The Inhabitants of Ironacton.

N^o 53.

UPON Complaint made by the Church-Wardens and Overseers of *Painewick*, "That *Mary* the Wife of *William King* and eight
" of their Children (naming them) had intruded into *Painewick*,
" &c." Two Justices removed them from thence to *Ironacton*; which
they adjudged to be the last legal Settlement of the Husband: And,
upon Appeal, the Sessions confirmed the Order.

Saturday 25th
October 1740.

A Motion was now made by *Mr. Yates*, to quash these Orders.
And his Objection was, That the Wife and Children are removed,
without the Husband: And that this amounts to a Divorce between
the Man and his Wife. But

THE COURT over-ruled the Objection.

How does it appear (they asked him) that the Husband *was not*
at Ironacton, at that Time? We can not *suppose* it to be wrong, un-
less it *appears* so: The Supposition is rather, that he *is* at the Place
where he is adjudged to be last legally settled. The Intrusion com-
plained of, into *Painewick*, is only *by the Wife and Children*. How
could the Justices remove the *Husband*, when he *was not complained*
of? The Order is right.

MOTION DENIED.

X

Rex

N^o 54.

Rex v. The Inhabitants of Petham.

Saturday 15th
Novem. 1740.
V. Sir John
Strange 1147.
S. C. also, Ses-
sions Cases,
Ed. 1750.
Vol 2. pa.
209. N^o 149.
S C.

TWO Justices removed *Thomas Sutton* and *Mary* his Wife, and *Mary* their Child, from *Dymchurch* to *Petham* (both in *Kent* :) And the Sessions confirmed it.

Case—*William Sutton*, the Father of *Thomas Sutton*, being legally settled in *Petham*, removed with his Family into the Parish of *Lydd*, and dwelt there under a Certificate from the Parish of *Petham*; but never gained any Settlement there or elsewhere, after his Removal from *Petham*. During the Time that *William Sutton* and his Family dwelt in *Lydd* under the Certificate, the said *Thomas Sutton* was born in *Lydd*. The said *Thomas Sutton*, not having gained any Settlement in his own Right, by Indenture duly stampd and executed, bearing Date the 10th of *June* 1721, bound himself an Apprentice for the Term of seven Years from the Day of the Date of the said Indenture, unto *Thomas Mayborne*, a Blacksmith, then residing in the Parish of *Tenterden*. At the Time of the said Binding, and also during the whole Time the said *Thomas Sutton* lived with the said *Thomas Mayborne* as his Apprentice under the said Indenture, the said *Thomas Mayborne* was a CERTIFICATE-PERSON under a Certificate from the Parish of *Sellinge* to the Parish of *Tenterden*. The said *Thomas Sutton* did dwell with and serve the said *Thomas Mayborne* in *Tenterden* as his Apprentice under the said Indenture, from the Day of the Date of the said Indenture unto the 30th of *August* 1723: And on the said 30th of *August*, the said *Thomas Mayborne*, being then a CERTIFICATE-PERSON as aforesaid, by his Deed-Poll by him duly executed, did give, grant, ASSIGN AND SET OVER unto *John Sutton* of the said Parish of *LYDD*, Blacksmith, his Right, Title, Term of Years to come, Claim, Interest, Service and Demand whatsoever, which he the said *Thomas Mayborne* had in or to the said *Thomas Sutton* by Virtue of the said Indenture; the said *Thomas Mayborne* thereby granting unto the said *John Sutton* his full Power and lawful Authority for the having, keeping and enjoying his said Apprentice the said *Thomas Sutton* for and during the said Term of Years then to come and unexpired. The said *Thomas Sutton* did consent to the said Assignment, and did dwell with and serve the said *John Sutton* as his Apprentice under the said Deed-Poll, in the said Parish of *LYDD*, from the Date of the said Deed-Poll, during the Rest of the said Term of seven Years for which he was bound Apprentice as aforesaid. That the said *John Sutton*, at the Time of the Execution of the said Deed-Poll by the said *Thomas Mayborne*, and during all the Time

the

the said *Thomas Sutton* dwelt with and served him the said *John Sutton* as his Apprentice under the said Deed-Poll, was a *Parishioner* legally settled in the said Parish of *LYDD*, and not a *Certificate-Person*. Upon the Expiration of the said Term of seven Years, the said *Thomas Sutton* went into and resided in *Dymchurch*; but never gained any Settlement there: And being likely to become chargeable to *Dymchurch*, was (together with his Wife and Child) removed by the said Order of two Justices, from *Dymchurch* to *Petham* as the Place of his last legal Settlement. The said *Thomas Mayborne*, after the granting the said Certificate by the Parish of *Sellinge* to the Parish of *Tenterden* for him the said *Thomas Mayborne*, never did any Act to avoid the said Certificate. *Mary* the Child of *Thomas Sutton*, at the Time of making the said Order of Removal and of the said Removal, was of the Age of three Months, and no more. Whereupon the Sessions confirm the Order of the two Justices.

On *Wednesday* the 11th of *June* last, a Motion was made by Sir *John Strange*, to quash these Orders. He insisted that the Apprentice was settled in *LYDD*, and not in *Petham*; having been by his own Consent assigned to an Inhabitant of *Lydd*, and served him there six Years under that Assignment.

Rule to shew Cause.

Upon shewing Cause now, the Question was, Whether the Pauper gained a Settlement in *Lydd*, by serving out his Apprenticeship there under this Assignment.

It depended upon the Construction of the Statute of 12 Ann. stat. 1. c. 18. s. 2. which, after reciting the Stat. of 8 & 9 W. 3. c. 30. and the Inconveniences to Parishes from the Apprentices and Servants of Certificate-Men, enacts "That such Apprentice by Virtue of such Apprenticeship or Binding to such Person shall not gain or be adjudged to have any Settlement in such Parish, Township, or Place, by reason of such Apprenticeship or Binding: But every such Apprentice shall have his Settlement in such Parish, Township, or Place as if he or they had not been bound Apprentice to such Person as aforesaid." And it was very well argued by Mr. Knowler, in Support of the Orders; and Sir *John Strange* and Mr. *Hardres*, against them.

Lord Chief Justice LEE. There is no Doubt but that if the original Binding had not been to a *Certificate-Man*, the Service in *Lydd* under the Assignment would have gained a Settlement. This has been often determined.*

But the present Question wholly depends on the Construction that shall be put on 12 Ann. c. 18. before which Statute, the Pa-

* V. ante,
Nº 5. and
Nº 43.

rish was obliged to receive a Certificate-Man ; and it was found that an irremovable Certificate-Man brought Hardships on Parishes, by taking Apprentices and Servants ; and therefore it enacts that such Servants or Apprentices shall not be settled in *such* Parish wherein the Certificate-Man lived.

It appears very strongly to my Apprehension, that as the Preamble and Purview of the Act relate only to the Security of the *Parish where the Certificate-Man lived*, it meant only to provide for the Ease of *that* Parish, for whose Benefit it was made.

The Construction put upon the Word "*such*," in the Instances cited by the Counsel for the Orders, does not come up to *this*. That Construction was agreeable to the Intention of *those* Statutes. As in Case of Certificate-Men's gaining Settlements ; the Court construes Acts favourably for *gaining* Settlements ; and the Relative "*such*" was construed accordingly.

So on the other Act of Parliament, about gaining a Settlement by *Service*. If a Person be hired for a Year, and serves for a Year, *such* Service shall gain a Settlement, though it be not an entire Service under the very same Hiring for a Year. There must, however, be a Hiring for a Year : And if there be also a Service for a Year, it is sufficient ; because it answers the Credit given to the Man by taking him into a Service for a Year ; and also answers the Benefit which the Parish has received from his Labour for a Year.

The End of *this* Act seems fully answered, by securing the *Parish which is obliged to receive the Certificate-Man* : And there is no Reason to extend it further.

Therefore I think this Man is settled at LYDD, under the Assignment.

THE THREE OTHER JUDGES concurred with the Chief Justice in Opinion ; and said that the Grievance which subsisted before the Act of 12 Ann. ought to be considered upon this Question concerning the Construction of it. And that Grievance was the Charge brought on Parishes obliged to receive Persons certificated from their own Parish, by such Certificate-Men's taking Apprentices and Servants, and so bringing a Burden upon them. This was the Mischief intended to be remedied.

But *another* Parish was not within this Grievance. Therefore the Act had no Occasion to provide for *them*. If the Legislature had intended it, they might have made the Binding void. But this it has not done ; it only enervates it in *one* particular Instance ; viz. with Regard to gaining a Settlement in *that* Parish : But with Regard to a *third* Parish it remains a good Binding, as it was before the Act.

Act. And, consequently, if it is a good Binding, and if the Apprenticeship is not void, the Assignment over is as good as it was before at Common Law; and there is no Difference whether he was a Certificate-man or not. And no Injury is done to the Parish of *Lydd*: For the Pauper comes into *that* Parish under the Assignment, just in the same Manner as if he had come into it under an original Binding.

And they held that those Acts of Parliament ought to receive a liberal Construction, in Favour of Settlements.

Mr. Justice CHAPPLE observed that the Words of the Act of 12 Ann. "that the Apprentice shall have his Settlement in such Place as if he had not been bound," must be taken to relate to *that* Parish only, where the Certificate-man lived.

Per Cur.—

RULE made ABSOLUTE.

Both ORDERS QUASHED.

Rex v. The Inhabitants of Newton.

N^o 55.

TWO Justices made an Order for the Removal of *Abrabam Greaves*, *Elizabeth* his Wife, and *Ann* their Daughter, from the Township of *Gouldesborough* to the Township of *Newton* in the *Willows*, otherwise *Newton-Kine*; (both, in the West Riding of *Yorkshire*;) And the Sessions, upon Appeal, confirmed this Order.

Case.—*Abrabam Greaves*, the Person removed, was in the Year 1733, on *Wednesday* after *Martinmas-day*, being the FOURTEENTH Day of November and the Day on which the first Statutes for the public Hiring of Servants was held at *Knareborough* in the said Riding, hired by *Richard Ellerbeck* of *Newton* to serve him from that Time till *Martinmas-day* following: And a Fortnight after, and in Pursuance of that Hiring, he went into the Service of the said *Ellerbeck*, and remained there till some Time in the Spring following, when by Accident he became lame, and by his Master's Consent left the Service for some Weeks, and then returned and stayed till the TENTH Day of November following, being the Day before *Martinmas-day* 1734; on which Day his Master and he accounted, and he left his Master's Service. On the *Wednesday* following he went to the first Statutes at *Knareborough* aforesaid; where he contracted to serve one *John Houseman*, till *Martinmas* following, and received 2s. 6d. as Earnest:

I

But

But before he entered into his said Service, viz. on the Sunday following, the said *Houfeman* sent him Word "he was otherwise provided;" and discharged him of his Contract. The said *Abraham* on the Thursday following, being the 21st Day of November, went to *Wetherby* in the said Riding, in which Town two public Statutes for the Hiring of Servants are and Time out of Mind have been annually held; one, on the first Thursday after *Martinmas*; and the other, (commonly called the latter Statutes or latter Club-day,) on the second Thursday after *Martinmas*-day; and on the said latter Club-day, being the said 21st Day of November, was hired by *John Simpson*, an Inhabitant in *Goldesborough*, to serve till *Martinmas* then next. That in Pursuance of such Hiring, he immediately entered into the Service of the said *Simpson*, and served him till the *Martinmas*-day following, in the Township of *Goldesborough*. The Sessions were of Opinion "that *Abraham* did not gain any Settlement in *Goldesborough* by the said Hiring with *Simpson*; but that he gained a Settlement at *Newton*, by Virtue of his Hiring to and Service with *Ellerbeck*;" and adjudged accordingly, "that his last legal Settlement was at *Newton*;" and confirmed the Order of the two Justices.

On Saturday the 17th of May last, a Motion was made, by Mr. *Fawkes*, to quash these Orders; for that there was neither a Hiring for a Year, nor a Service for a Year. And they are, both of them, necessary: It has been several Times so adjudged.

Mr. J. PAGE said, So it had: Yet, he was afraid, most of the Hirings at Statutes throughout England were of this Kind.

RULE to shew CAUSE.

Upon shewing Cause (on Wednesday 11th June.)

Mr. Justice PROBYN observed that the Case does not state any Custom about these Statute-fairs. But he had a Notion that there had been Cases where the Custom and Usage of the Country had been stated, "to hire from the Statute-fair till *Martinmas* following;" and that such Hirings pursuant to the Custom had been allowed of.

But Mr. *Fawkes* alledged that there were Cases which adjudged "that if there was such a Custom, it could not control the Act of Parliament:" And he particularly named one, viz. *Rex v. Inhabitants of South Cerney*, Tr. 5 & 6 G. 2. [v. *Sessions Cases*, Ed. 1750, Vol. 1. pa. 174, N^o 156.]

It was now ADJOURNED.

It

It came on again upon *Saturday* 24th of *June*; when an Objection was made to the *Certiorari*, by Mr. *Denison*, of Counsel for the Township of *Gouldsbrough*, that it did not appear to be properly returned: The Return was only signed *R. Whiston*; not saying who or what he was; or that he had any proper Authority to return it. It is not even prefaced to be "*the Answer of such a one*;" (Which is the usual Method.)

Mr. Justice *PROBYN*.—It ought to be returned by the Person to whom it is directed: And it is directed to the Justices of the Peace.

Lord Chief Justice *LEE* directed other Returns to be looked into: Which appeared to run thus—"The Answer of A. B. and C. D. two of the Justices within named;" and then told the Counsel who were for quashing the Orders, They had better look into it, and see if they could support it. It was therefore again

ADJOURNED.

But finding it could not be supported, they (on *Wednesday* 25th of *June*) moved to quash their own *Certiorari*: Which was granted.

On the first Day of this Term, they moved for a new one. But this was opposed. For

Note—On the 24th of *June* last, the new Act* concerning *Certioraries* to remove Orders of Justices, &c, took Place: Which li-
mits them to be moved for within six Calendar Months, and directs six Days Notice in Writing to be given to the Justices. And Notice had been here given, in the Vacation, to two Justices who were at the Sessions: But none was given to the two Justices who made the original Order. Wherefore Mr. *J. Chapple* (to whom Application for a new *Certiorari* was made in the Vacation) would only grant his *Fiat* for a *Certiorari* to remove the Order of Sessions: But he referred them to a Motion in Court, as to granting a new *Certiorari* to remove the original Order of the two Justices.

Note also—This Application to the Court was not within six Months: But the original Application to Mr. Justice *Chapple* was within the six Months, (though upon the very last Day of them.)

Upon shewing Cause, on *Monday* the 10th of this Month, against this Rule obtained on the first Day of this Term, the Clause in the Act* of the last Session of Parliament was insisted on by Mr. *Denison*; which makes two Things previously necessary before the Court
issues

* 13 G. 2.
c. 18. sect. 5.

* 13 G. 2.
c. 18. sect. 5.

issues a *Certiorari*; viz. (1st,) That it be issued within six Calendar Months after the Order is made: (For the Clause is prohibitory that the Court *shall not* otherwise grant it; and therefore there ought to be an Affidavit that the Order was made within six Calendar Months.) (2dly,) There must be six Days Notice given to the Justices who made the Order.

THE COURT thought this such a Case as they ought to assist if they could. Here was a regular Application to a Judge within Time, and with due Notice, as to the Order of *Sessions*; and he has granted a *Fiat* for a *Certiorari* to return it. So that you are in Possession already of a *Fiat* as to the Order of *Sessions*. And when *that* Order shall be before the Court, we may find a Method of having the original Order before us, without a new *Certiorari*, or without any Infringement of the Act. If the *Certiorari* commands the Justices to return the *Sessions* Order, *cum omnibus eum tangentibus*, we shall see what Return they will make to it.

Therefore you had better take out your *Certiorari* upon the *Fiat* you are already in Possession of: And there don't seem to be any Need of the new one which you now apply for.

THEY accordingly did so. And on *Wednesday* the 19th of this Month, (both Orders being then returned up,) a Motion was made by Sir *John Strange*, to quash them; and a Rule granted, to shew Cause why they should not be quashed.

It was now moved, by Sir *John Strange* and Mr. *Fawkes*, to make this Rule absolute: There was neither a Hiring for a Year, nor a Service for a Year, in *Newton*.

Mr. Justice PAGE said he believed great Numbers of Servants were hired in many Countries (and he was sure of it in his own) *only from the Statute-fair*.

Lord Chief Justice LEE said it could never be supported to be a Settlement in *Newton*; as there was neither * a Hiring for a Year nor a Service for a Year: And after having spoken to Mr. Justice *Chapman* and *Wright*—
 * *V. Rex v. Inhabitants of West Woodbay, H. 5 G. 1. (It is in Str. 143.)*

THE COURT†, without reading the Orders, or Mr. *Denison's* attempting any Argument against it, made the

RULE ABSOLUTE for quashing both ORDERS.

† Mr. Justice WRIGHT was now come upon the Bench. *V. Post, pa.*, (at the End of No 57.)

Hilary Term

14 Geo. 2. 1740.

Rex v. The Inhabitants of Clifthydon.

Nº 56.

TWO Justices removed *Richard Minify, Joan his Wife, and Jenny, Richard, Henry and Ann, their Children, from Clifthydon to Broadbembury*: The Sessions, upon Appeal, reversed the Order of the two Justices. Saturday 24th Jan. 1740.

CASE stated.—*R. M.* was bound by Indenture bearing Date 1 Jan. 1716, to *J. Wescott*, for seven Years, in *Uffculm*; and lived there with him about two Years: At which Time; *J. W.* went in to *Broadbembury*, and carried his said Apprentice with him; where he lived with his said Master about two or three Years. Then his said Master put him to live with one *T. a B. in Tallaton*; where he lived about three Months, and then returned to his said Master in *Broadbembury*, and tarried with him about one Week; when his Master ordered him to go and live with one *Perrot* in *Broadbembury*; and there he continued to live about the Space of three Months; at which Time *Wescott* died: But the Term was not then expired. The said *Minify* never lived with any Person, after the Death of his said Master, under the said Indenture. And it appearing unto this Court that the said *Perrot* came into the said Parish of *Broadbembury* with a Certificate from the Parish of *Ottery St. Mary*, dated the 8th Day of *April* 1724, duly allowed by two Justices as the law requireth, and there lived under the said Certificate;—this Court being of Opinion “that the said *Minify*’s living with the said *Perrot* as aforesaid, “did not gain any Settlement in *Broadbembury*,” therefore they vacate the Order of the two Justices.

On *Thursday* 27th Nov. last, a Motion was made to quash this Order of Sessions: And thereupon, a Rule to shew Cause.

The Objection was that the Master was not a Certificate-man during any Time of the Apprenticeship: And his being so afterwards was immaterial.

The RULE was now made ABSOLUTE, without Defence.

Y

Rex

No. 57.

Rex v. The Inhabitants of Higher Walton.

Monday 9th
Feb. 1740.

A Motion was made, by Mr. *Wilbraham* and Mr. *Robinson* Recorder of *Scarborough*, to quash an Order of Sessions confirming an Order of two Justices for the Removal of *Mary Bennet* the Wife of *Samuel Bennet*, and her Daughter, to *Higher Walton*: Which they adjudged to be *their* last legal Settlement.

The first Objection was, that it does not appear whether it was this Woman's Settlement in her *own* Right, or in the Right of her *Husband*: And nothing shall be intended. Now, if it was not her Settlement in Right of her *Husband*, the Justices had no Power to send her thither.

The second—That the *Child's Age* is not mentioned. But
Per Cur.—(1st,) It is adjudged to be her last legal Settlement. And she *could not* be settled at any other Place than where her *Husband* was settled. And we are not to intend any Thing to vitiate the Order: Therefore we can not intend “that the *Husband's* Settlement was not at *Higher Walton*.”
 2dly, As they expressly adjudge the Daughter to be settled there, there is no Need to specify her Age.

MOTION DENIED.

Easter Term 14 Geo. 2. 1741.

None, of this Term.

Trinity

Trinity Term

14 & 15 Geo. 2. 1741.

Rex v. Inhabitants of Great Bedwin. No. 58.

ON Wednesday the 11th of February last, a Motion was made, ^{Tuesday 16th June 1741.} by Mr. Henley and Mr. Gundry, and on Monday 20th of April 1741 renewed by Mr. Denison, to quash an Order of Sessions confirming an Order of two Justices for the Removal of Charles May, ^{V. Sir John Strange 1158. and Sess. Cases, Ed. 1750. Vol. 2. pa. 190. No. 142.} Mary his Wife, and Joan, Hodges, Betty, John, Mary and Samuel, their Children, from Wilcot to Great Bedwin, (both in Wiltshire.)

CASE.—Great Bedwin appealed to the Sessions, from an Order of two Justices, which begins thus — “Wilts — To wit — To the Churchwardens and Overseers of the Poor of the Parish of Wilcot, and to the Churchwardens and Overseers of the Poor of the Parish of Great Bedwin in the said County:” And it states, that Charles May, &c, have for some Time dwelt in Wilcot, being allowed to do so by Reason of a Certificate bearing Date 27 Dec. 1724, under the Hands and Seals of the Churchwardens and Overseers of the Poor of the said Parish of Great Bedwin, and allowed by two Justices of the Peace for the County of Wilts aforesaid according to the Directions of the several Acts of Parliament in that Behalf made and provided. Then it goes on thus — “Now the said Charles May, being reduced to great Poverty, lately applied to the Churchwardens and Overseers of the Parish of Wilcot aforesaid; who accordingly did relieve him:” And therefore the Justices remove him, &c, from Wilcot to Great Bedwin, &c.

The Sessions, on Motion made on Behalf of the Parish of Wilcot, suggesting Defects in Form, and praying that they might be amended pursuant to 5 G. 2. c. 19. and Counsel heard on both Sides, &c, being of Opinion that the said Defects are only Matters of Form, and that the original Order was amendable within the said Act; for that it appears to them, upon due Examination on Oath, that the said Order was really and truly made by the two Justices UPON THE

COMPLAINT of the Churchwardens and Overseers of *Wilcot* in due Manner made to them in that Behalf, "That the said C. M. his Wife and Children *were* ACTUALLY BECOME CHARGEABLE to *Wilcot*;" but that the omitting to mention it in the Order was a mere Mistake in drawing up the said Order; and for that it doth also now appear to this Court, that the said G. H. and J. S. were at the Time of making the said Order two of his Majesty's Justices of Peace of and for the said County of Wilts, and that one of them was then of the Quorum, and that the omitting to mention the same in the said Order was also a mere Mistake in drawing up the said Order; therefore ORDER the Defects of the said original Order to be AMENDED in Court: Which being accordingly done, the said original Order (as the same is now amended by Order of this Court) is as followeth—*Wilts, to wit, &c.* Whereas it appears, &c. (one whereof is of the Quorum,) UPON THE COMPLAINT of the Churchwardens and Overseers of the Poor of the Parish of *Wilcot*, "that, &c. (as in the original Order,) and that he and his Family BECAME THEREBY ACTUALLY CHARGEABLE to the said Parish of *Wilcot*, AS WE HEREBY ADJUDGE, &c. &c. And the said Appeal against the said Order as now amended, now coming on to be heard and determined on the Merits; this Court having heard and considered what has been offered in Evidence on Behalf of both the said Parishes, is of Opinion that the said Order, as amended, ought to be confirmed: And they confirm it accordingly.

The Objection to this Order of Sessions, and the Ground of the Motion to quash it, was, "That they had amended Matters of SUBSTANCE as Matters of Form:" Which is an Amendment not warranted by the Act of 5 G. 2. c. 19. For they have added, 1st, that it was made "upon Complaint of the Parish Officers of *Wilcot*;" 2dly, an Adjudication "that the Paupers were actually become chargeable;" and 3dly, "that the Justices were Justices of the Peace for the County of Wilts, and that one of them was of the Quorum." Yet still it does not appear what County *Wilcot* is in: For, the Words—"in the said County"—relate only to *Bedwin*, not to *Wilcot*.

If they had quashed it for Want of Form, a new original Order might have been made.

Mr. *Hollings* likewise supported the Motion, and added some other Objections.

It was defended by Sir *John Strange* and Mr. *Boote*.

THE

~~THE COURT~~ were all of Opinion, that the Amendments were more than Form; and not allowable within either the Words or the Intention of 5 G. 2. c. 19.

Lord Chief Justice LEE.—I think we have had but one Case upon this Act of Parliament, since the making of it; and that came from the County of *Bucks*: The Amendment was of a Removal to the wrong Place; which appeared upon the Face of the Order to be a Mistake; for they adjudged the Settlement to be in *one* Parish, and yet removed to *another*. A Rule was made, in that Case, to shew Cause; But there was no further Proceeding upon it.

The Act directs that the Sessions shall amend Defects in Form; and afterwards proceed upon the Merits. One would think, this meant Defects or Mistakes appearing upon the *Face* of the Order, like that *Buckinghamshire* Case which I have mentioned; *mere* Defects or Wants of *Form*. This is the first Thing they are to do.

Then after Amendments in *Form*, they are to examine the Truth and Merits; and hear Proofs, and determine. Now some of these Matters here amended seem to be *MERITS*: As, for Instance, the adding "UPON COMPLAINT of the Overseers of the *Parish* from whence the Paupers were removed;" without which Complaint, the Justices have *no Jurisdiction*.

Then what can be more of the Merits than the Certificate-man's being become, *actually chargeable*? Now the two Justices have *not adjudged that*; they only say that he *applied* to the Overseers and *was relieved* by them: But it does not appear that it was at the *Parish* Expence. And as there are no other Merits particularly stated by the Order, probably, these were the very Merits which were the Ground of the Appeal.

If there be any *Opposition* between Form and Merits, this Amendment must go further than Defects in *Form*: These Matters must be *Merits*.

And as to their being Justices of the County—though a * *plain* * *Ante*, N^o 12. Reference to the Margin will make an Order good as to the County, and N^o 45. yet *this* is uncertain (as it is worded) to *which* of the two Parishes the Words—"in the said County"—relate.

The allowing such Amendments as these to be within the true Construction of this Statute, would throw the Determination of all Cases of this Sort into the Hands of the Sessions: Which would be inverting the established Method prescribed by the Legislature.

The Three other JUDGES concurred in Opinion. And

Mr.

Mr. Justice
WRIGHT was
sworn in, as
Puisné Judge
of B. R. on
24th Nov.
1740; on Sir
Edm. Probyn's
being made
Lord Chief
Baron.

Mr. Justice WRIGHT added, That the Sessions can't amend any Thing that requires Examination.



Per Cur.—

RULE made ABSOLUTE:
BOTH ORDERS QUASHED.

Nº 59.

Rex v. The Inhabitants of Weston.

Wednesday
17th June
1741.

V. Sir John
Strange 1156.
and Sessions
Cases, Ed.
1750, vol. 2.
pa. 189, Nº
141. S.C.

TWO Justices removed John Farnsworth, his Wife, and three Children, with Mary Hollingsworth his Apprentice Girl, from Kirton to Weston (both in Nottinghamshire :) And the Sessions, upon Appeal, confirmed the said Order of Removal.

Case—John Farnsworth was settled at Weston; and afterwards took a Farm of 10*l.* per Annum for one Year at Kirton, which had been left at that Rent for five or six Years then last past; but before that Time was left at 7*l.* a Year only. He also took a By-tack of 20*s.* a Year, at Kirton, for one Year: And he and his Family continued there, upon the said Tenements, ten Months. When he first took and entered on these Tenements, he was not of Ability to stock them; having only two Cows, two Pigs and one Horse; all which was not sufficient Stock for such Tacks: But he had Household Furniture, Copper, brewing Vessels, and other Utenfils for brewing Ale to sell; and had a Licence for that Purpose. Before his Entry to the 10*l.* a Year Farm, he was told by the former Tenant that such Tack was too dear at 10*l.* a Year. To which he answered “That he did not regard the Dearness; for as it was 10*l.* a Year, it would gain him a Settlement, and put an End to a Dispute there was between two Towns about his Settlement:” BUT DESIRED such former Tenant TO TAKE NO NOTICE THEREOF, to any Body. The Sessions being of Opinion “that the said J. F. did not by Virtue of such Renting and Inhabitaney under the Circumstances aforesaid, gain a Settlement in the said Parish of Kirton,” therefore confirm the Order of Removal.

A Motion had been made by Mr. Heron, on the first Day of this Term, to quash these Orders: For that it is a plain Settlement gained by John Farnsworth in Kirton; as it is stated “that he took a Tenement of 10*l.* a Year there, for a Year, and resided upon it “ten

"ten Months." It is not stated to be *under* that Value: And as *no Fraud* is expressly *adjudged*, none can be presumed by this Court.

RULE to shew CAUSE.

Upon shewing Cause why these Orders should not be quashed, it was said that here is enough to occasion a Suspicion of a Fraud: And it appears upon the State of the Facts, that it *was under* the Value of 10 l. a Year.

Lord Chief Justice LEE—The Consideration of this Court must be, Whether the Sessions have stated a Case that justifies the Removal of this Man and his Family from *Kirton*, by shewing that the Tenement he rented in *Kirton* was *under* the Value of 10 l. a Year. We are not to determine the Matter, upon the Evidence given to the Sessions; but upon *Facts stated* and *Adjudications* made by them. Here, they have stated Circumstances: But they have not explicitly stated the real Value; *nor* have they *adjudged* any *Fraud*.

The Value of the Man's *Stock* is not material: The Value of the *Tenement* is the Point.

The Act requires the Renting a Tenement of the yearly Value of Ten Pounds. They state "that he did take a Tenement of 10 l. a Year, for a Year, at *Kirton*. Indeed they add that it *had been* let at 7 l. a Year, formerly. But it might be then *worth* more, or might have been afterwards improved: It had, for *five* or *six* Years, been *let at ten Pounds per Annum*. They likewise say his *Stock* was not sufficient for 10 l. a Year. But the Quantity or Value of his *Stock* does not alter the Value of the *Tenement*. And they also state a Conversation between him and the former Tenant, who told him it was too dear: To which he answered "that as it was 10 l. a Year "it would gain him a Settlement and put an End to a Dispute about "his Settlement;" and desired the former Tenant to take no Notice of the Matter to any Body.

Yet they *do not* ADJUDGE *that there was any* FRAUD; nor do they state that it was *under* the Value of 10 l. a Year; and the Evidence rather proves it to be *of* that Value.

They *must expressly* state "that it is *fraudulent*;" or else we can not take it to be so. And we must take the Case stated to be the *whole* Case.

He was therefore of Opinion for quashing both Orders. And

The THREE other JUDGES concurring,

The RULE for QUASHING BOTH ORDERS was

MADE ABSOLUTE.

Michaelmas

Michaelmas Term

15 Geo. 2. 1741.

N^o 60.

Rex v. The Inhabitants of Berkswell.

Friday 20th
Nov. 1741.

A Motion was made by Mr. *Dudford*, on the second Day of this Term, to quash an Order of Sessions confirming an Order of two Justices for removing *Mary Smith*, single Woman, from *Bollfall* to *Berkswell*, (both in *Warwickshire*.)

The Objection was, that a former Order, *not being appealed from* within due Time, was *final* upon them. It was made for removing *Thomas Price* and *Mary* his Wife (this same Pauper) from *Berkswell* to *Bollfall*; and was not appealed from.

Note.—

This Order of Sessions entered into the Merits of the Marriage, and adjudged her to be a *single* Woman; it not appearing that *T. P.*'s first Wife was dead at the Time, &c. and therefore it confirmed the present Order for the Removal of her, *as such*, back again to *Berkswell*; though it was a subsequent Order of two Justices, and though the former one was never appealed from.

A Rule was then made to shew Cause why these two Orders should not be quashed. And

It was now MADE ABSOLUTE without Defence.

Hilary

Hilary Term

15 Geo. 2. 1741.

Rex v. The Inhabitants of Stockland.

N^o 61.

TWO Justices removed *John Spiller, Elizabeth his Wife, and Samuel, Mary, Unity, John, Thomas and Elizabeth, their Children,* from *Cotleigh* in *Devonshire* to *Stockland* in *Dorsetshire*: And, upon Appeal, the Sessions confirmed the Order of the two Justices.

Thursday 4th
Feb. 1741.

V. Sir John
Strange 1162.

CASE.—*John Spiller* the Pauper was lawfully settled in *Stockland*. And *John Salter* of *Cotleigh*, being possessed of a House, Orchard and Garden containing an Acre, in *Cotleigh* aforesaid, for the Residue of a Term of Years determinable on three Lives, which cost 40*l.* by Indenture mortgaged the same House and Premises to the said *J. Spiller*, during the Residue of the said Term; subject to Redemption on Payment of 15*l.* with lawful Interest on a Day therein mentioned, and past in the Life-time of the said *J. Salter*. That *J. Salter* afterwards died intestate: At the Time of whose Death, one of such Lives was dead; and there was then due on such Mortgage, the principal Sum of 15*l.* and thirty Shillings for two Years Interest thereof. And the Mortgage-mones being then not paid, and the said *J. Salter* being also indebted to the said *J. Spiller*, by Bond and simple Contract, in the Sum of 18*l.* 10*s.* making in all 35*l.* the said *J. Spiller* agreed with the Widow of the said *J. Salter*, that in Case she would renounce the Administration, she should have the Household Goods: Which was done accordingly; and on her Renunciation, the said *J. Spiller* took Letters of Administration (as principal Creditor) to the said *J. Salter*; and thereupon entered upon such House, Orchard and Premises (which was then appraised at TWENTY-FIVE POUNDS,) and possessed himself thereof, and also of a Cyder-wring appraised at 40*s.* But the Rest of the Effects (which were appraised at 20*s.*) he permitted the Widow to keep and retain to her own Use, pursuant to such Agreement. And then the said *J. Spil-*

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ler removed into the said Parish of Cotleigh, and settled in such House and Premises, and WAS OFFERED THIRTY POUNDS for the same, and continued to dwell therein by the Space of eight Years; when such Estate DETERMINED: Nevertheless, he continued in the said House, TILL he was removed by the said Order. The Sessions being of Opinion "that the said J. Spiller did not, by such Possession and living "in such House and Premises, gain any Settlement in Cotleigh afore-
"said;" they therefore confirm the Order of the two Justices.

On Wednesday the 18th of November last a Motion was made by Serjeant Hussy, to quash these Orders: For that by the Act of 9 G. 1. c. 7. s. 5. it was a Purchase of the Value of 30*l*. and did gain a Settlement in Cotleigh, from whence he could not be removed.

Upon shewing Cause now, it was denied, by Sir John Strange and Mr. Gill, to be within this Act.

This is only a Mortgage of fifteen Pounds: Whereas it ought to be a Purchase (bonâ fide paid) of thirty Pounds out and out. The simple Contract-debt can never be taken in as Part of the Purchase-money bonâ fide paid on a Purchase. And even if the whole Money was to be allowed, yet it was appraised only at twenty five Pounds. And though he was afterwards offered thirty Pounds, it is not stated to be worth that Sum.

Mr. Gundry and Mr. Lloyd insisted that the Value appeared to be at least 30*l*. He was offered 30*l*. And a Thing is worth what it will fetch. Appraisements are always under the true Value.

However, as he came into it under a legal Title, as Administrator, he was irremovable from it; and by inhabiting forty Days upon it, gained a Settlement.

The Court were unanimous that he was legally settled in Cotleigh. The Consideration he has bonâ fide paid, exceeds the Sum of 30*l*. And he remained upon the Estate, irremovable, forty Days. 'Tis clearly within the Words of the Act. Therefore the Orders ought to be quashed.

Per Cur.—

ORDERS QUASHED.

Rex v. The Inhabitants of St. Nicholas in Harwich. N^o 62.

TWO Justices made an Order for the Removal of *Thomas Parsons, Susannah his Wife, and Susannah, Sarah, Thomas, William, Robert and Elizabeth, their Children, from Woolverstone in Suffolk to St. Nicholas in Harwich, in Essex: And the Sessions, upon Appeal, confirmed their Order.*

Wednesday
10th Feb.
1740.

V. Sir John
Strange 1163,
S. C. but ex-
tremely short,
and not suffi-
ciently parti-
cular.

The Order of Sessions is to the following Effect—*viz.* This Court being moved, by Way of Appeal, to set aside an Order under the Hands and Seals of *John Sparrowe and William Acton, Esquires, two, &c.* for the removing of *Thomas Parsons, Susannah his Wife, Susannah, Sarah, Thomas, William, Robert and Elizabeth, their Children, from the Parish of Woolverstone in the County of Suffolk to the Parish of St. Nicholas in Harwich in the County of Essex, as the Place of their last legal Settlement; on hearing the Counsel and the Evidence on both Sides—*

The Case appeared to be—That the said *Thomas Parsons* obtained a CERTIFICATE from the Churchwarden and Overseer of *Woolverstone* in the Words following—"To the Churchwardens and Overseers of the Poor of the Parish of HARWICH NEAR DOVER-COURT in the County of *Essex*, or to any or either of them. *Suffolk, to wit,* We whose Hands and Seals are hereunto set, bearing the Churchwardens and Overseers of the Poor of the Parish of *Woolverstone* in the County of *Suffolk* aforesaid, do hereby certify that We do own and acknowledge *T. P. S.* his Wife, *S. S. T. J.* and *W.* their Children, to be our Inhabitants legally settled in the Parish of *Woolverstone* aforesaid. In Witness whereof we have hereunto set our Hands and Seals this 31st Day of *December* in the 11 G. 2. &c. 1737. *James Hare, Churchwarden: The Mark of Jonathan Rozier, Overseer. Attested by R. N. T. C.—*We whose Names are hereunto subscribed, two of his Majesty's Justices of the Peace for the County aforesaid, do allow of the above-written Certificate: And we do also certify that *T. C.* one of the Witnesses who attested the Execution of the said Certificate, hath made Oath before us, that he did see the Churchwarden and Overseer, whose Names and Seals are to the said Certificate subscribed and set, severally sign and Seal the said Certificate; And that the Names of the said *R. N.* and *T. C.* (whose Names are above subscribed as Witnesses to the Execu-

tion of the said Certificate) are of their own proper Hand-writing.
 " Dated the 31st Day of *December* in the Year of our Lord 1737.
 " *E. Lynch, John Cornelius.*"—Which said Certificate appeared to this Court to be legally executed, attested, sworn and allowed, pursuant to an Act of Parliament lately made and provided.

That the said *Thomas Parsons* went into the Parish of *St. Nicholas in Harwich*, with the said Certificate, and delivered the same unto *Mr. Griffith Davis*, AN INHABITANT of the said Parish: But whether he was a CHURCHWARDEN or OVERSEER of the said Parish, DID NOT APPEAR.

Subsequent to which Delivery, *William Trotman* of *Ipswich*, Brewer, having hired a Public House in the said Parish of *St. Nicholas*, (called the *Angel*) at a yearly Rent of 18*l.* let Part of it to the said *Parsons*, as a Public House, for 9*l.* 10*s.* a Year; reserving the Brewing-office and other Parts of the said House to himself: And subsequent to the Letting, and the said *Parsons* having obtained a Licence from the Justices of the Burrough of *Harwich*, entered into the following Bond—" Know all Men by these Presents,
 " That I *William Trotman* of *Ipswich* in the County of *Suffolk*,
 " Brewer, am held and firmly bound unto the Mayor and Burgesses
 " of the Burrough of *Harwich* in the County of *Essex* in 250*l.* of
 " good and lawful Money of *Great Britain*, to be paid to the said
 " Mayor and Burgesses, their certain Attorney or Successors: To
 " which Payment well and truly to be made I bind myself, my
 " Heirs, Executors and Administrators, firmly by these Presents.
 " Sealed with my Seal. Dated the 10th Day of *January* in the
 " Year of our Lord 1737, and 11 G. 2. &c.

" Whereas the above-bounden *William Trotman* is at present the
 " immediate Tenant to the Landlord, Owner or Proprietor of the
 " Messuage, Tenement or Inn, commonly called or known by the
 " Name or Sign of the *Angel*, situate in *Harwich* abovesaid, of late
 " let or rented at and under the yearly Rent of 18*l.* And whereas
 " the said *William Trotman* hath put and placed one *Thomas Parsons*
 " an Inhabitant of the Parish of *Woolverstone* in the County of *Suff-*
 " *folk*, into the said House for the Management and carrying on of
 " the Business of the same, as a Victualler; who, upon the special
 " Instance and Request of the said *William Trotman* on his Behalf,
 " hath obtained from *John Philipson*, Esq; the present Mayor of the
 " said Borough of *Harwich*, and other of his Majesty's Justices of
 " the Peace for the same, a Licence for his so doing in the usual
 " Form: And whereas the said *Thomas Parsons*, with Respect to
 " his

" his Substance or Estate and Effects, is under a legal Incapacity of
 " hiring the said House in a fair Way, as a Tenant, or of renting
 " any other Lands or Tenements of the yearly Rent of 10*l.* or up-
 " wards, whereby to gain a Settlement out of the said Parish of
 " *Woolverstone*; and having a large Family, to wit, a Wife and five
 " Children, might haply hereafter, by hiring the said House of the
 " said *William Trotman* or others deriving Interest from him, be
 " deemed to gain a Settlement in *Harwich*, and by such Means be-
 " come a Charge and Burthen to the said Mayor and Burgeses of
 " the said Burrough and other the Inhabitants of the Parish of *St.*
 " *Nicholas* within the same (which the said *William Trotman*, in Con-
 " sideration of the said Licence being granted at his Request, hath
 " undertaken, as much as in his Power is, to prevent;) Now there-
 " fore the Condition of the above-written Obligation is such, that
 " if the said *William Trotman*, his Heirs, Executors or Administra-
 " tors, do and shall from Time to Time and at all Times hereafter
 " save harmless and keep indemnified, as well the said Mayor and
 " Burgeses of the Burrough of *Harwich* aforesaid, and their Succes-
 " sors, as other the Inhabitants and Parishioners of the said Parish of
 " *St. Nicholas* within the same, of and from all Charges, Damages and
 " Expences which they or any of them might hereafter happen to sus-
 " tain or be put unto for the Provision or Maintenance of the said *T.*
 " *P.* his Wife or Children or any of them, by Reason or Means of
 " his or their gaining any legal Settlement in *Harwich* by or under
 " his the said *Thomas Parsons*'s hiring or renting the said House of or
 " under him the said *William Trotman*, or of or under *William Trotman*
 " his Son, or of or under any other Person or Persons whatsoever
 " with his the said *William Trotman* the Father's Assent, Consent,
 " Means or Procurement; then this Obligation to be void, and so
 " forth. *W. Trotman*.—Sealed and delivered in the Presence of
 " us *S. G. J. A.*"

Soon after this Hiring of *Trotman*, the said *Parsons* hired, of an-
 other Person, a Stable, (for the Convenience of keeping Hogs from
 Mr. *Trotman*'s Brewing-office,) and a Yard or Garden, at the Rent
 of 20*s.* per Annum, (both in the said Parish,) which the said *Parsons*
 entered upon: But the said *Trotman* soon discontinuing his Brewing
 at the said Office, the said *Parsons* then let off the said Stable for
 10*s.* per Annum; but continued the Occupation of the said Yard or
 Garden for a whole Year, and paid 10*s.* for the Rent thereof. The
 said *Parsons* likewise entered upon, resided in, and continued the
 Occupation of the said Part of the House under this Demise of
Trotman.

Trotman, for two Years and a Half, which was as long as *Trotman's* Interest continued therein; and after that was determined, occupied the whole House (but without previously agreeing with the Owner for his Stay therein,) for upwards of half a Year; when the Owner distrained him for half a Year's Rent, and levied of his Goods then remaining upon the Premises the Sum of 9*l.* for the said Half Year's Rent.

During the Time of these several Occupations, the said *Parsons* was charged with and paid his Share of the public Levies of the said Parish of *St. Nicholas*.

It appeared likewise to the said Court, that the said *Parsons* had been a Farmer in large Dealings; but that he had contracted Debts, was fallen into Decay, and was not able to go on with the said Business of Farming: Subsequent to which, he hired the said Part of the House of the said *Trotman*; which the said *Parsons* furnished with Goods, to the Value of 30 or 40*l.*

It likewise appears to this Court, that the proper Name of the Parish appealing is *ST. NICHOLAS IN HARWICH*; and that there is no such Parish of *HARWICH NEAR DOVER-COURT*: Nor did it appear to this Court that the Burrough or Corporation of *Harwich* contains any more Parishes than one.

Upon which Case this Court is of Opinion, upon the Facts ONLY above stated, "That the said Hirings and Occupations were fraudulent, and could not intitle a Certificate-person to a Settlement:" But BELIEVING THE SAID CERTIFICATE, WITH THE CIRCUMSTANCES ATTENDING IT, to be INEFFECTUAL to the said Parish of *St. Nicholas* in *Harwich*, do therefore confirm the said Order of Removal.

On Friday 13th November last, a Motion was made, by Mr. *Lloyd*, to quash these Orders: For the Certificate was an effectual one to the Parish of *St. Nicholas*. The Sessions seem to found their Notion "of its being ineffectual to that Parish," upon two Reasons; viz. 1st, that this Certificate was directed to the Parish of *Harwich* generally; whereas the true Name of it was *St. Nicholas Harwich*: And 2dly, the Person to whom he delivered it did not appear to be a Churchwarden or Overseer. But, as to the former of these Reasons—the Answer is, That the Act of Parliament of 8 & 9 W. 3. c. 30. s. 1. does not require the Certificate to be directed at all: No more does the explanatory Act of 9 & 10 W. 3. c. 11. And

As to the latter of their Reasons—It is *not necessary* that the Inhabitant to whom the Certificate was delivered should *APPEAR to be a Churchwarden or Overseer* of the Parish.

THE COUNSEL who now shewed Cause on Behalf of the Parish of *Woolverstone*, did not much rely upon it “that a *particular Direction* was necessary.” They admitted that a Certificate would be good *without any* Direction at all: But at the same Time they argued that a *wrong* Direction would vitiate it, and compared it to a Case in *Salk. 493.* between the Parishes of *St. George* and *St. Olave Southwark*; where an Order was quashed for being directed to the wrong Parish officers. They chiefly relied on its *not being delivered to a Parish-officer*: Which the Act of 8 & 9 W. 3. c. 30. s. 1. expressly requires; and which ought, as they insisted, to *appear*. And if the Certificate was *ineffectual* to the Parish of *St. Nicholas*, then he gained a Settlement there, by being *charged and paying* his Share of its public Rates and Levies.

However, even if this Certificate, thus delivered, were admitted to be effectual and legal, and to bind the Parish of *Woolverstone*, yet they insisted that he gained a Settlement in *St. Nicholas* by renting 10*l.* a Year. Indeed the Sessions state this to be fraudulent: But they adjudge it to be so, upon the *Facts stated*, and upon *those ONLY*: And since they have given their Reasons, the Court are Judges of the *Conclusion* they draw from those Reasons. And upon the *Facts stated*, there is not the least Colour of Fraud.

Mr. Justice CHAPPLE*.—The Question is, Whether the Pauper gained any Settlement in *Harwich*; either by renting 10*l.* a Year there, or by being charged and paying to the Rates of that Parish.

Now being charged and *paying to the Rates* will *not* gain him a Settlement, if he was a Certificate-man: And as to the Renting a Tenement of 10*l.* a Year, the Sessions *adjudge it fraudulent*.

If the Justices specially state their Reasons, this Court may judge of them. However the Justices are proper Judges of the Fraud: And here are several Circumstance which shew this Taking to have been calculated to gain a Settlement, and seem to be *Evidences* of Fraud; and the Sessions having adjudged it so, they seem, upon the whole, to have done right.

As to the *VALIDITY* of the Certificate—there are *two* Objections to it. The Justices say that “they believe it to be ineffectual to the Parish of *St. Nicholas*.” They state that there is but one Parish in *Harwich* viz. *St. Nicholas*: And the Certificate is addressed to the

* L. C. J. Lee, was ill: Mr. Justice Page was dead; and his Successor not appointed. So that there were only two Judges in Court.

Parish.

Parish of *Harwich near Dover-Court*; whereas there is *no* such Parish.

I do not think *any Direction at all to be necessary*: And a *Misdirection* is as a *void Direction*. Besides, if a *Direction* were necessary, I should doubt whether this *Mistake of the Name* would make it bad. I remember a *Case of a Carrier*, in *Lord Raymond's Time*, where the *Plaintiff recovered*, though there was *no such Parish as Wicomb*, the true Name being *CHIPPING-Wicomb*. However, I do not think *any Direction to be necessary*.

Then as to the *Delivery of the Certificate*—it was delivered to an *Inhabitant*, though it does not appear that he was a *Parish-Officer*. If it had been a *Removal to Harwich*, then indeed a *Delivery to the Officer had been necessary*. But the Acts do *not* make it a *Condition* “that he shall deliver his Certificate to the Parish Officers.”

He therefore held this Man *not* to have gained a *Settlement in Harwich*: And was of Opinion that the Orders ought to be quashed.

Mr. J. WRIGHT concurred—It is admitted, on all Hands, that the Act of 8 & 9 W. 3. c. 30. does *not* require *any DIRECTION* of a Certificate; and that if there had been *none*, it had nevertheless been good. The Reason of it is, because the Parish of *Woolverstone* has by their Certificate *acknowledged* him to be “an *Inhabitant legally settled in their Parish*.” And they are thereby bound against all the World.

As to the *Delivery of the Certificate*—the Parish to whom a Certificate is delivered can not remove the certificated Person indeed, till he becomes chargeable: But *if no Certificate is delivered* to them, *non constat* “that there is any; and they may, in *that Case*, remove him on Complaint of his being likely to become chargeable. But yet, this does *not* make the Certificate *ineffectual*: The Parish who gave the Certificate is in all Events *bound by the Certificate*. Therefore the Certificate is good *as to the Parish of Woolverstone*.

The Question then is, whether he gained a *Settlement in Harwich* within 9 & 10 W. 3. c. 11. by taking a Tenement of 10l. a Year Value.

Now though he took such a Tenement, yet he *let off Part of it*. And the Bond recites his *Poverty and Incapacity to gain a Settlement*. Trotman had let him in: And the Pauper continues in, after Trotman's Interest ceased, without any new Bargain. He takes a little Stable and Garden at 20s. a Year: And then he quits the Stable, and there remained only 9l. 10s. a Year. The Justices adjudge this

* N. B. 8 &
9 W. 3. c. 30.
f. 1. does ex-
pressly re-
quire “that
“ he shall de-
“ liver it to
“ the Church-
“ wardens or
“ Overseers.”

this fraudulent: And the Circumstances vindicate their Adjudication. But if the Facts had *not* vindicated their Conclusion, yet unless it had manifestly and plainly appeared to have been a Misconclusion, I do not see that we could have adjudged it "*not* to be fraudulent."

Upon the whole, I think the Settlement is at *Woolverstone*; and that the Rule ought to be made absolute.

Per Cur.—

RULE made absolute for quashing both ORDERS.

Memorandum.—On the last Day of this Hilary Term 1741, 15 G. 2. Mr. Justice DENISON took his Place upon the Bench, as puisné Judge; a Vacancy having happened by the Death of SIR FRANCIS PAGE, who died on the 18th of December 1741; having been second Judge of this Court ever since the Accession of his present Majesty King George the Second.

Easter Term.

15 Geo. 2. 1742.

Rex v. The Inhabitants of Bowling.

Nº 63.

TWO Justices made an Order for the Removal of *John Hillam*, *Judith* his Wife, and *Jeremiah* and *Elizabeth* their Children, (not setting forth the Ages of the Children,) from *Bradford* to *Bowling*, (both, in the West Riding of *Yorkshire*;) And the Sessions, upon Appeal, confirmed that Order.

CASE stated.—*John Hillam*, being legally settled at *Bradford*, was bound Apprentice to *Abraham Marden*, a Certificate-man in *Bowling*; where he served his Master six Years under the said Indenture. During the Service, *Abraham Marden* the Master rented and resided upon a Tenement of nine Pounds a Year in *Bowling*;

A a

and,

and, at the same Time, also rented Lands of the Value of one Pound fifteen Shillings a Year in Wybsey in the said Riding. The Sessions are of Opinion "that the said *Abraham Marden*, by renting upwards " of ten Pounds a Year in Manner above-mentioned, obtained a Settlement for himself and for the said *John Hillam* his Apprentice;" and therefore confirm the Order of the two Justices.

On Friday the 5th of February last, a Motion was made, by Sir *John Strange*, Solicitor General, to quash these Orders: And the two following Exceptions were taken by him.

1st, The Order of the two Justices does not *adjudge that the WIFE AND FAMILY of this John Hillam have gained a Settlement*; nor does it *set forth the Age of the Children*: It only adjudges "that the " last Place of the lawful Settlement of the said *John Hillam* is in " the said Township of *Bowling*."

2dly, That the *Apprenticeship* was to a *Certificate* man, who had not himself gained a Settlement; having not rented 10*l.* a Year in the *Parish* to which he came by *Certificate*.

Upon shewing Cause now, it was answered to the 1st Objection—That it could affect only the *Children*: For, as the Husband is adjudged to be settled in *Bowling*, his Wife is, of Consequence, settled there likewise.

And as to the second—It was grounded upon a Notion "that the " 10*l.* a Year ought to be ALL in the *Parish* whither he came by " *Certificate*." But to this it was answered, That renting 10*l.* a Year is required only in general; and is not confined to the particular *Parish*: The Words—"in such *Parish*"—relate only to "executing " some annual Office." And it is within the same Reason, (*viz.* the Substance and Credit of the Man,) whether he rents that Value in one *Parish*, or in different *Parishes*.

THE COURT held the first Exception to be fatal with Regard to the *Children*: For, the established Rule is "That where the Children " are sent in Consequence of their Father's Settlement, either the " *Ages of the Children must be set out*," (to shew that they are of such tender Years as not to have gained a Settlement for themselves;) " or there must be an express Adjudication of their having gained no " other Settlement." Therefore it is bad as to the *Children*; neither of the before-mentioned Matters being alledged or adjudged.

As to the 2d Exception—It depends upon the Construction of the Words of 9 & 10 W. 3. c. 11, which says that no *Certificate*-person shall gain a Settlement in the *Parish*, "Unless he or they shall really " and *bonâ fide* take a Lease of a Tenement of the yearly Value " of

"of 10*l.* or shall execute some annual Office in such Parish." Now there is no Reason why this Statute should receive a different Construction from that of 13 & 14 C. 2. c. 12. The Words—"in such Parish"—in 9 & 10 W. 3. do not restrain the Tenement to the same Parish: They rather favour the Construction being the same as on 13 & 14 C. 2. for they relate only to the latter Clause of executing some annual Office; and not at all to the former, of taking a Lease of a Tenement of the yearly Value of 10*l.* And that the Construction is so upon the Statute of C. 2. appears by the Cases of *Rex v. The Inhabitants of Hollibourn**, M. 3 G. 2. B. R. and *Rex v. The Inhabitants of Sandwich*†. And there is not the same Reason for the Renting 10*l.* a Year to be in the same Parish, as there is for serving an Office in it. For the first Clause turns upon a Man's Substance; viz. his Capacity of renting 10*l.* a Year; and it is immaterial where he rents it: But where he executes an annual Office in a Parish, the Parish is benefited by his so doing.

Per Cur.—

Both Orders must be QUASHED as to the Children; and AFFIRMED as to the Rest.

Rex v. The Inhabitants of Ladock

N^o 64.

TWO Justices made an Order for the Removal of *John Roberts*, *Joan* his Wife, *John Roberts* the Younger aged about eleven Years, *Richard Roberts* aged about nine Years, *Walter Roberts* aged about five Years, and *Grace Roberts* aged about two Years, (the Sons and Daughter of the said *John Roberts*) from *Ladock* to *St. Enoder*, (both in *Cornwall*;) And, upon Appeal, the Sessions discharged the Order of the two Justices.

The same Day.

V. Sir John Strange 1164.

CASE.—*John Roberts* covenanted with one *Daniel Huddy* to serve him for one Year in *Ladock*, for 4*l.* 10*s.* and served him, and received the said Year's Wages of him. Upon the Expiration of the said Year, *John Roberts* the Pauper, made a new Contract with the said Master, to serve him for another Year, for the Wages of 5*l.* 10*s.*; and in Pursuance of the last-mentioned Contract, served with the said Master, and lived with him in *LADOCK* till the Time of his Master's Death (which happened about half a Year after the last-mentioned Contract was made.) Upon the Death of the Master, one *William Huddy* of *St. Enoder* (the Executor of the said *Daniel Huddy*,

dy the late Master) asked the said Pauper "if he was willing to serve him (the Executor) for the Remainder of the said last-mentioned Year, according to the Bargain made between the said Testator and the said *John Roberts*:" Which *Roberts* agreed to; and thereupon went with and served the said Executor in *St. Enoder* during the Remainder of the said Year; and at the End of it, received of *William Huddy* some Part of the Wages that were due to the said *Roberts* at the Death of the said Testator (who had paid some Part, himself, to the said *Roberts*;) and the Executor also paid the said *Roberts* the Residue of the Year's Wages contracted for with the Testator. Upon Consideration of which, the Sessions discharged the Order of the two Justices, and ordered the Paupers to be conveyed from *St. Enoder* to *Ladock*.

On Friday 5th Feb. last, a Motion was made, by Serjeant *Hussey*, to quash this Order of Sessions; the Man's true Settlement being, as he said, in *St. Enoder*. He had a Rule to shew Cause.

And Cause was now shewn, by Mr. *Clive* and Mr. *Gundry*.

* See the 4th
Part of my
Reports, pa.
311, 312.

In Support of the Motion, it was urged that the Service of the Executor for the last Part of the Year in *St. Enoder* gained him a Settlement in *St. Enoder*: For the last forty Days Service makes the Settlement. So it was holden in *Tr. 8 G. 1. B. R.* between* *St. Peter's Oxford* and *Fawley Court*. This was a Continuance of the Service: And it is not necessary that it should be under the same Contract. To prove these Assertions, several Cases were cited. *Trin. 12 Ann. Silvertown and Ashton. [V. Sess. Cases, Ed. 1750, Vol. 1. pa. 44. N^o 46.] Hil. 1 G. 1. Stoke Fleming and Bury Pomeroy. [V. the same Book, pa. 88. N^o 83.] Mich. 9 Ann. Dunsfold and Fletch- ing. H. 1 G. 1. Brightwell and Henning. [V. Lucas's Reports, 10 Mod. pa. 287.] Pasch. 4 G. 2. Ivinghoe and Solebury. Trin. 13 W. 3. Rex v. Inhabitants of Eccles. And Hil. 8 G. 2. Rex v. Inhabitants of St. George's Hanover Square. [V. ante, N^o 5. p. 12.]*

In *P. 4 G. 2. B. R.* between the Parishes of *Ivinghoe* and *Solebury*—a Service under the Assignee gained a Settlement. So an Apprentice served an Assignee, and gained a Settlement, *Rex v. The Inhabitants of St. George's Hanover Square. H. 8 G. 2. B. R.*

The Counsel for the Order of Sessions admitted the Hiring and Service for a Year to be good; And that the Settlement would have been in *St. Enoder*, if he had continued to serve the same Master. But they denied that the Service of an Executor could be considered as the same Service with the Service of the Testator, within 3 & 4 W. & M. c. 11. The Contract with the deceased Master and the

Service

Service to him were *personal*. By the *Death* of the Master, the Contract was at an *End*; and the Servant might have refused to serve the Executor during the Remainder of the Year. Therefore this was not one and the same Service: It can't be esteemed a *Continuance* of it, after the Master is *dead*. The Cases cited on the other Side are all founded upon their being considered as Continuations of the Service under the *same* Master. But *this* Master is *dead*; and *William Huddy* does not go on with the Servant as Executor to *Daniel*; but makes a *new* Contract with him. Therefore they are not applicable to *this* Case.

Lord Chief Justice LEE.—The first Year's Service (with *Daniel Huddy*) is not material to the present Case: The Question is “Whether he gained a Settlement at *St. Enoder* by serving the Executor.”

It is agreed, that where there is a proper Hiring and Service, the Place of Service for the *last forty Days* gives the Settlement.

The present Question depends upon 8 & 9 W. 3. c. 30. *sect.* 4. *viz.* “Whether it be a *Continuance* for a Year in the *same* Service.” The Words of that Act are—“Unless such Person shall *continue and abide* in the *same* Service during the Space of one whole Year.”

This Case differs from that of *Apprentices*; where the Settlement is gained by Service under the Indenture.

There has been no adjudged Case of serving an *Executor* of the Master of a *hired* Servant. But I do not know how to distinguish this Case from that of **Solebury and Iwingboe*; where the Servant **V. ante*, served the *Assignee* of the Farm; and the Court considered it as a *Continuance of the Service* under a Hiring for a Year. So, in this Case, the Contract is *continued* by the Executor; and the Difference of Persons cannot be more material in *this* Case, than it was in *that*: Nor does the Act of Parliament require the Service to be the same as to the *Place* or *Person*; but only a *Continuance* of the *same* Service. And *this* is a *Continuance* of the same Service, and *not* a *new* Contract. *pa. 13.*

Where there is a Hiring for a Year and also a Service for a Year, they shall be joined together. I think this is the *same* Service; *viz.* a Hiring continued, like the Case of *Solebury and Iwingboe*; with a Difference only as to the *Person*. Therefore the Order of the two Justices ought to be affirmed; and the Order of Sessions quashed.

Mr. Justice CHAPPLE was absent.

Mr. Justice WRIGHT and Mr. Justice DENISON concurred in his Lordship's Opinion.—They held it *no* new Contract. The

Executor

Executor was the *Representative* of the Testator; and only asked the Servant "if he was willing to *continue* the former Contract." The Contract was *not* determined and dissolved by the Death of the Master. The Servant was obliged to serve the Executor; and the Executor, to pay him. *Dalt.* 129.

And they agreed that this, being the Case of an *Executor*, was a stronger Case than that of *Solebury* and *Ivinghoe*, where the second Master was only *Assignee* of the Farm, (a mere Stranger.)

Per Cur. unanimously,

RULE made ABSOLUTE for QUASHING the Order of Sessions, and AFFIRMING the Order of the two Justices.

No. 65.

Rex v. The Inhabitants of Sherborne.

Friday 21st
May 1742.

V. S. C. in Sir
John Strange
1165. and
Seff. Cases,
Ed. 1750.
Vol. 2. pa.
383. No. 203.
(The former
is very short:
The latter, a
quite imper-
fect Scrap.)

TWO Justices made an Order for the Removal of *George Eyres*, *Catharine* his Wife, and *Elizabeth*, *James*, *Catharine*, *Mary*, *George* and *Robert*, their Children, from *Sherborne* to *Thornford*, (both in *Dorsetshire*.) And the Sessions, upon Appeal, discharged this Order.

The Order of Sessions is as follows—Upon hearing the Appeal of the Inhabitants of *Thornford*, from the Order of two Justices for the Removal of *George Eyres* (Button-mold Cutter,) *Catharine* his Wife, *Elizabeth*, *James*, *Catharine*, *Mary*, *George* and *Robert*, their Children, from *Sherborne* to *Thornford* as the Place of their last legal Settlement, it appears unto this Court, and this Court doth adjudge it to be true,

That *Humphry Eyres*, Father of the said *George* the Pauper, was an Inhabitant legally settled in *Thornford*; and that the said *H. E.* (who is still living) by and with a legal and proper CERTIFICATE from *Thornford*, bearing Date 30 March 1702, went into the Parish of *Sherborne*, with his Wife and Family: By which Certificate, the said *H. E.* his Wife and Family were owned to be legal Inhabitants of *Thornford*, and that they would receive and provide for them when they should become chargeable. That about two Years after the said *H. E.* went into the said Parish of *Sherborne*, his THEN Wife died, and shortly after he MARRIED a SECOND Wife, the Mother of the Pauper *George Eyres*. That the Pauper, about three Years after such second Marriage, was born in the Parish of *Sherborne* whilst his Father the said *H. E.* resided there under the said Certificate. That when

when the Pauper was about *sixteen* Years of Age and lived with his said Father as Part of his Family, the said *H. E.* the Father *bired* one Francis Pope to cut *Button-molds* for the said *H. E.* And during the Time the said Francis Pope so worked with the said *H. E.* he the said *H. E.* the Father AND ALSO the said *G. E.* the Pauper (his Son) agreed with the said Francis Pope "that he the said *G. E.* the Pauper should work with AND SERVE the said Francis Pope for one Year, at the Making of *Button-molds*;" which Business the said *G. E.* the Pauper had never before been employed in: And the Agreement was "that the said Pauper *G. E.* was to have nothing for his first Month; for the second Month, he was to have 1s. a Week; for the third Month, 1s. 6d. a Week; and for the Rest of the Year, 2s. a Week." And the said *G. E.* the Pauper received, from the said *F. Pope*, his Wages accordingly, and applied them to his own Use. And that the said *G. E.* the Pauper so worked and served the said *F. Pope* for the whole Year; and one Fortnight more, on Account of his being lame within the said Year; which the said *F. Pope* insisted on. And during the whole Time the said *G. E.* the Pauper worked and served as aforesaid with the said *F. Pope*, he lodged and dined with his Father the said *H. E.* in *Sherborne*. And the said *F. Pope* worked for no other Person but the said *H. E.* And also during all the Time aforesaid, the said *F. Pope* and *G. E.* the Pauper worked at the said *H. E.*'s House: But the said *F. Pope* was a Housekeeper and an Inhabitant in the said Parish of *Sherborne*. And that the last legal Settlements of the Wife and Children of the said Pauper *G. E.* depend upon the Settlement of the said *Geo. Eyres*, upon the Facts as above stated. Whereupon, &c, they discharge the Order of the two Justices.

On Tuesday 3d Feb. 1740, a Motion was made, by Mr. Gundry, to quash this Order of Sessions: For the Settlement of *Humphry's* Son *George* is clearly in *Thornford*, though he was born in *Sherborne*; because he was born under a Certificate from *Thornford*: And the Service in *Sherborne* is out of the Case; because a Certificate-person has but two Ways to gain a Settlement; viz. renting a Tenement the yearly Value of 10l. or executing some annual Office in the Parish*.

A RULE was made to shew CAUSE.

Upon shewing Cause, on the 12th of the said Month, Mr. Lloyd and Mr. Denison argued, on Behalf of the Parish of *Thornford*, That the Son of a Certificate-man, born after the Certificate, and more especially

* V. 9 & 10
W. 3. c. 11.

especially as he was *by an after-taken Wife*, was capable of gaining a Settlement by *Service*, in the Parish to which his Father came with a Certificate: And that this was a good Hiring and Service, to gain him a Settlement in *Sberborne*.

THE Main Difficulty with the COURT was about the Capability of a *Child* of a *Certificate-person* to gain a Settlement, by *SERVICE*: Or, whether the Child was not equally restrained as it's Parent was, to the two Methods specified in 9 W. 3. c. 11.

Mr. Justice WRIGHT observed that the Act of 8 & 9 W. 3. c. 30. does say "though born in the Parish, &c.:" But then it follows, generally, "not having *otherwise* acquired a legal Settlement *there*;" which seems *not to confine them* to the two Methods prescribed to the Certificate-man *himself*.

But then comes 9 & 10 W. 3. c. 11. which says "that no *Person or Persons WHATSOEVER* who come into any Parish *under* * a Certificate shall be adjudged by any Act whatsoever to gain a Settlement unless by one of the two Ways therein mentioned." Therefore I should think the Method of *SERVICE* *not* to be sufficient. For the Child, though born in the Parish after the Date of the Certificate, is a *CERTIFICATE-PERSON* under 8 & 9 W. 3: And 9 & 10 W. 3. recites that Act at large; and the enacting Clause of it is very short; but it is *declaratory* and *explanatory*; and therefore must include Children born afterwards, notwithstanding the Word "*COMING*."

THE COURT, however, thought the Matter deserved Consideration as to *this* Point. But they seemed satisfied that *afterborn* Children were as much *included* in the Certificate, as those who existed at the Date of it: And they saw no Objection to the *present Hiring and Service*, on Supposition that the Child of a Certificate-person *could* acquire a Settlement *by this Method*.

It was therefore ordered to STAND OVER.

This Point was now mentioned again on *Friday 14th May 1742*: viz.

"Whether the *Son of a Certificate-person*, born in the Parish to which the Father came by Certificate, *after* the Certificate, can

* Note.—The Words of 9 & 10 W. 3. are not "*under* a Certificate." But in the Recital, it is "by what Acts any Person coming to inhabit or reside in any Parish *by VIRTUE* of any such Certificate:" And the enacting Clause is That no Person or Persons *whatsoever* who shall come into any Parish *BY* such Certificate," (not *by Virtue* of.)

"gain

"gain a Settlement OTHERWISE than a Certificate-person HIMSELF
"could."

Lord Chief Justice LEE.—As to the Point of this Hiring and Service—we held that sufficient before.

As to the other Question—It remained to be considered, upon the two Acts of 8 & 9 W. 3. c. 30. and 9 & 10 W. 3. c. 11.

Now the first of these Acts gives Power to remove Children born after the Certificate, when they become actually chargeable. But the latter Act says "No Person or Persons whatsoever who shall come into any Parish by Certificate shall be adjudged, by any Act whatsoever, to have procured a legal Settlement therein; UNLESS he or they shall really and bona fide take a Lease of a Tenement of the yearly Value of 10l; or shall execute some annual Office in such Parish (being legally placed in such Office.)"

I should think this subsequent Act to be only a Direction by what Acts Settlements may be gained by Persons who are in Parishes under Certificates. And this Person does, by his Birth, come by Certificate into the Parish of Sherborne.

Mr. Justice WRIGHT was strongly of the same Opinion.

Per Cur.—

RULE to CONFIRM the original Order, and QUASH the Order of Sessions; Nisi Causa, in a Week.

At the End of the Week (being Friday 21st May)

Mr. Lloyd shewed Cause, and urged that the explanatory Act* related only to Persons themselves, coming to reside in Parishes with their Families. There is a Contradistinction expressed between the Man himself coming by Certificate, and his Family. He said, this Construction was reasonable; because it would be very hard that the Children of Certificate-persons should be excluded from gaining Settlements in the same Manner as other young Persons might do. And he observed that the two Methods of gaining Settlements by Certificate-persons mentioned in the Act, viz. serving an annual Office, or renting a Tenement of 10l. a Year, both relate only to adult Persons: From whence he argued that their Children were not meant to be included in the Restriction.

Mr. Gundry, contra.—The Construction now advanced would make a Difference, which the Statute never intended, between Children born before the Certificate, and those born after it.

The Children are Certificate-persons within the Act, as well as the Father: And though Children may not *at first* be adult enough to serve Offices or rent Tenements; yet they may *grow* old enough in Time. The Children have all the *Advantages* of Certificate-persons; viz. to come *without Notice in Writing*, and to remain irremovable till they become *actually* chargeable. Mr. Lloyd's Construction would be inconsistent.

Lord Chief Justice LEE held the former Act of 8 & 9 W. 3. c. 30. *sect.* 1. to extend not only to the Certificate-man himself, but likewise to *all his Family* and *all his Children*, whether born *before* or *after* the Certificate, coming into Parishes. The second Act declares what shall gain them a Settlement in *THAT Parish* to which they come by Certificate; and restrains it to two Methods only, which it specifies: And *Service* is neither of these two Methods to which it is restrained.

Mr. Justice CHAPPLE and Mr. Justice WRIGHT concurred with the Lord Chief Justice.

Mr. Justice DENISON enlarged more upon the Acts; and observed (and all the Court agreed with him) that the Certificate provided for the Security of that Parish only * *into which* the Certificate-persons came to reside by Virtue of such Certificate: But it did not exclude the Children of a Certificate-man from gaining Settlements in *OTHER Parishes*, in the *same* Manner as *any Body else* might do. So that Mr. Lloyd's Objection of the Children of Certificate-men being under particular Hardships beyond other Persons, if this Construction should prevail, does not carry so much Force in it as he would have us suppose.

Per Cur.—

ORDER OF SESSIONS *quashed*:

ORIGINAL ORDER *affirmed*.

* *Note.* The Words of 9 & 10 W. 3. are "shall be adjudged by any Act whatsoever to have gained a legal Settlement in such Parish, unless he or they shall really and *bona fide* take a Lease of a Tenement of the yearly Value of 10 l. or shall execute some annual Office in such Parish (being legally placed in such Office.)"

Trinity Term

16 Geo. 2. 1742.

Rex v. The Inhabitants of Helton. No. 66.

TWO Justices made an Order for the Removal of *Hannah Beamont*, (a Bastard-child of a Certificate-woman,) from *Lydlinch* to *Helton*, (the Place of it's Mother's Settlement) both in *Dorsetshire*. Monday 5th
June 1742.
V. Sir John
Strange 1168.
and Sessions
Cases, Ed.
1750, vol. 2.
pa. 249, N^o
170. S.C.

CASE.—*Mary Beamont*, being then about sixteen Years of Age (and afterwards the Mother of *Hannah Beamont* the Pauper now removed) lived with her the said *Mary Beamont's* Mother in *Lydlinch*, her said Mother being then the Wife of *Andrew Miles* of *Lydlinch*, Labourer. And she the said *Mary Beamont* being of a loose Character, in Respect of her Chastity, in the said Parish of *Lydlinch*, and her Place of legal Settlement being in *Helton*, the Overseers of *Lydlinch*, on the 4th Feb. 1734, obtained an Order under the Hands and Seals of, &c, two of his Majesty's Justices, &c, of *Dorset*, bearing Date the said 4th of Feb. 1734, for the Removal of the said *Mary Beamont* from *Lydlinch* to *Helton* as the Place of her last legal Settlement: And she was by the said Order removed accordingly. And on the 7th of the said Month of *February*, and after Service of the said Order, and without appealing from the same, the Churchwardens and Overseers of the Poor of the said Parish of *Helton*, by a *Certificate*, under their Hands and Seals bearing Date the said 7th of *February* 1734, to the said Parish of *Lydlinch* duly and legally made executed and delivered, did thereby own and acknowledge the said *Mary Beamont* to be an Inhabitant legally settled in the said Parish of *Helton*: By Virtue of which *Certificate* the said *Mary Beamont* on the same Day returned and lived again with her said Mother, in the said Parish of *Lydlinch*; and whilst she so resided in the said Parish of *Lydlinch* UNDER THE SAID CERTIFICATE, to wit, on 16th Feb. 1735, she the said *Mary Beamont*

mont was delivered of the Pauper, the said Hannab Beamont, and who is a BASTARD-Child.

Whereupon and upon Debate of the Matter and hearing Counsel, &c, on the Case as above stated, the Sessions confirm the Order of the two Justices.

Upon Monday the 24th of May last, a Motion was made, by Mr. Lloyd, to quash these Orders.

The Objection was, That the BASTARD's Settlement was in Lydlinch, the Parish where it was born: And it could not be sent to the Place which gave the Certificate; as a legitimate Child might have been.

Mr. Gundry, who shewed Cause now, on Behalf of the Parish of Lydlinch, against quashing the Orders, argued that *Partus sequitur Ventrem*; and that this Case was within the Words as well as the Meaning of the Certificate-act of 9 & 10 W. 3. c. 30; which makes no Difference between legitimate and illegitimate Children. And the Parish of Lydlinch were, by 8 & 9 W. 3. c. 30. obliged to receive the Mother upon her bringing a Certificate from Helton. And even when they perceived her to be with Child, they could not remove her till she was brought to Bed and thereby become actually chargeable to them. Therefore it is but just that Helton, who gave her the Certificate, should maintain the Child.

He said, this was a Fraud: And cited 2 Bulst. 349. 2 Salk. 474. 2 Salk. 532. and a Case of the Parish of New Windsor, Tr. 5 G. 1. about one Pizzey, a Certificate-man from White Waltham, who had Bastard-children born in New Windsor. [V. Sir John Strange 186. where it is reported quite against him.]

Mr. Lloyd, on the other Side, not only insisted that all Bastards are settled where they are born; but pretended that the Certificate stated upon this Order was not pursuant to the Certificate-act; and consequently the Parish of Lydlinch was not bound to receive the Mother of this Bastard: For it is not stated to be "allowed by two Justices," nor to be "attested by two Witnesses:" Therefore it is as no Certificate at all.

Lord Chief Justice LEE.—This Woman was removed from Lydlinch to Helton by an Order of two Justices: And three Days afterwards, the Parish of Helton sent her back to Lydlinch with a Certificate, acknowledging her to be their Parishioner. She was, a little more than a Year afterwards, there delivered of a Bastard-child; which is the Pauper now removed from Lydlinch to Helton.

As

As to the Certificate—it is stated to be “*duly and legally made*” “*executed and delivered.*” Therefore we have no Reason to take it otherwise, than that it was such a Certificate as the Parish were obliged to submit to. If the Certificate had been doubted of, with Regard to its Validity, there would have been negative Words inserted in the special State of the Case: This, *as stated*, is good to a *reasonable* Intendment.

I apprehend that we can not in any Degree consider this as a *Fraud*. There appears none upon the Fact *as here stated* by the Justices. And it is plain that she was *not* with Child *when* the Certificate was *given*: For she was not delivered till *above a Year* after. Besides, it is a certain Rule “*that Fraud must be expressly stated; or*” “*else the Court can take no Notice of any.*” However, here does not appear any Ground or Suspicion of Fraud, upon the Facts stated.

The Cases cited by the Counsel who argued for quashing the Orders, do not come up to the Point of the present Case. That in *Bulstrode* was apparent Practice, and went upon the Fraud. And those in *Salkeld** were illegal Removals of Women big with Child, and very soon brought to Bed. And if a Pauper big with Child is sent by an Order of Removal to a Parish; and *before* the Parish can relieve themselves, the Pauper is brought to Bed; the Parish shall be relieved, if that Order is afterwards reversed. For every Thing that happens under an illegal Removal shall be chargeable upon the Parish from whence the illegal Removal was made; and the Birth of the Child in the other Parish was occasioned by the wrongful Removal of the Mother to that Parish.

2 Salk. 474.
the Case of
Much Wal-
tham and Pe-
ram: And
532, Westbury
and Coston.

So a Child born in a Gaol is of a different Consideration from the present: There the Woman is in *Custodia Legis*, to answer the Offence charged upon her; but in *other* Respects, she shall be considered as a Parishioner of her own Parish.

It seems to depend entirely on the Statute of King *William*†; †8 & 9 W. 3. which obliges the Parish to receive a Certificate-person with his or her Family and Children, and to suffer them to continue there till actually chargeable: *Then* indeed the Certificate-person and his Children (though born in the Parish) may be removed.

The Question is, WHOM they have a Power to remove as CHILDREN.

Now BASTARD-children can not be considered *as the Children of the Certificate-person*: They are No-BODY's Children; they are *Filii Populi*. Indeed the Case between the Parishes of *New Windsor* and *White*.

White Waltham is cited as being otherwise. That may therefore be looked into.

N. B. Mr. *Chiffinch* (as *Amicus Curiae*) said He remembered that the Parish who gave the Certificate was there holden to be concluded to say "that the Woman was not the Man's "Wife;" having *certified and acknowledged that she was* * "his Wife."

LEE Chief Justice.—That may indeed be; and rightly enough. But I know of no Case that considers *Bastards* as the CHILDREN of any one.

Therefore I think the Act cannot be construed into such a Meaning; and that this Removal cannot be maintained, which sends the Bastard away from the Place where born, under the Notion of a Child of the Certificate-person.

Mr. Justice CHAPPLE concurred with the Chief Justice, both as to the Certificate, and the Construction of 8 & 9 W. 3. c. 30. —The Word "*Family*," and the Word "*Children*," in this Act, must mean *legitimate* Children: So that *Bastards* are not even within the Words of the Act.

Mr. Justice WRIGHT and Mr. Justice DENISON were of the same Opinion, on both Points. And the former said that a Bastard is (in general) settled where it is born: Therefore *Partus non sequitur Ventrem* in this Case. And in the Case of *New Windsor* and *White Waltham*, the Court declared "that illegitimate Children were Nobody's Children." But *White Waltham* had concluded themselves from saying "that they were illegitimate."

Here is no Fraud that appears; nor can we presume any: *Odiosa non præsumuntur*. [*V. ante*, pa. 167, accord.]

Per Cur.—

RULE made absolute to QUASH both the Orders.

BOTH ORDERS quashed.

V. Post, N^o , *Rex v. Inhabitants of Headcorn, Trin.*
1743, 18 & 19 G. 2.

* So it was: And it was also holden expressly (as the Court now resolve) "that a Bastard can not be sent to the Parish who gave its Parent a Certificate" And it was agreed that the Word "*Children*" meant *legitimate* Children only. [I have a MSS Report of this Case.]

Michaelmas Term

16 Geo. 2. 1742.

Rex v. The Inhabitants of Woodchester.

N^o 67.

TWO Justices made an Order, bearing Date on the 22d of *Thursday 11th*
February 1741, 15 G. 2. for the Removal of Thomas Hankin, Nov. 1742.
Hester (of the Age of about seven Years,) *Elizabeth* (aged about *V. Sir John*
 five Years,) and *Sarah* (aged about three Years,) his three Daugh- *Strange 1172,*
 ters by *Hester* his Wife lately deceased, from *Nympsfield* to *Woodches-* *S. C.*
ter (both in *Gloucestershire* :) And the Sessions, upon Appeal, con-
 firmed this Order.

The Case stated on the Order of Sessions was this—

BEFORE the Births of the said Hester, Elizabeth and Sarah,
 the three Daughters of the said *Thomas Hankin* by *Hester* his Wife,
 or either of them, the said *T. H.* and *Hester* his Wife were removed
 from the said Parish of *Nympsfield* to the said Parish of *Woodches-*
ter, by Virtue of an Order of two Justices of the Peace of the said
 County of *Gloucester* (*Quorum unus*) bearing Date the 15th Day of
February ONE THOUSAND SEVEN HUNDRED THIRTY-ONE: And
 such last-mentioned Order was confirmed at the General Quarter-
 Sessions of the Peace of and for the said County of *Gloucester* then
 next after the Date of the same Order, by the Court, for Want of
 an Appeal thereto. And this Court [of Sessions] now on hearing
 this present Appeal touching the Settlement of the said *Hester, Eli-*
zabeth and *Sarah*, the Daughters of the said *T. H.* and *Hester* his
 Wife, did determine that the said Parish of *Woodchester* ought NOT
 to be permitted to give any Evidence “that the said *T. H.* was mar-
 “ried to ANOTHER WOMAN before his Intermarriage with the said
 “*Hester* the Mother, so removed with him under the said former Or-
 “der; and that such other Woman is still living:” Which the said
 Parish of *Woodchester* now, on hearing this present Appeal, alledged
 they were ready, and offered to do.

On:

On Saturday the 26th of June last, a Motion was made, by Mr. Ford, to quash these Orders.

His Objection to this Sessions-order, as far as it related to the three Children, who were all born subsequent to the first Order, was, That the Parish of Woodchester ought to have been permitted to give Evidence "that Thomas Hankin the Pauper was married to another Woman before his Intermarriage with Hester their Mother, who was removed with him by the former Order;" and "of such other Woman being still living." For, as his former Wife was living, the three Children by Hester, must consequently be Bastards, and were settled where they were born: (Which was in Nympsfield.)

His Objection went only to the Children: For he acknowledged that the Man himself was fixed upon Woodchester by the former Order unappealed from.

But he insisted that the Parish of Woodchester were not concluded by that Order, though unappealed from, with Regard to these Children who were born subsequent to it.

The Counsel who shewed Cause now against quashing the Orders (Mr. John Yate, long since deceased) laid it down as a settled Rule, "that Orders of Removal confirmed at Sessions as being unappealed from, are conclusive upon the Parish charged with the Paupers, against all the World." The only Difference between the first and second Orders of Removal, in the present Instance, is the Addition of the Children: For the Removal is of the same Father and Mother; and from and to the same Parishes.

The Parish of Woodchester are now estopped to say "that they were not Man and Wife." It may be urged, "That the Marriage is not the Matter expressly adjudged." But it is adjudged as much as it possibly could be in an Order of Removal.

The Counsel for Woodchester, who argued in Support of the Rule (Sir John Strange and Mr. Ford,) agreed that the Order confirmed and unappealed from was conclusive upon them, as to the Man: But they argued that it was not so as to the Children.

ESTOPPELS are not to be favoured. They ought to be plain, positive and certain; not argumentative. Now there may be a Case supposed, where Woodchester could not have appealed, even though they had known "that she was not his Wife:" And that is, supposing her own Settlement was at Woodchester.

The mere calling her his Wife, does not prove her to be so, or stop us from shewing the contrary. The present Estoppel tends to do Injustice;

justice; and therefore shall not conclude the Parish of Woodchester.

Lord Chief Justice LEE.—It must be agreed that the original Order confirmed by the Sessions is *final* as to the *Man and Wife*. Then the Man and the Children, being again at *Nympsfield*, are, a second Time, removed to *Woodchester* as their Settlement: And upon Appeal, it is attempted to give Evidence “that the Father and Mother were not *Man and Wife*.” But *that* must have been examined and inquired into by the two Justices who made the original Order: For they have removed these two Persons *as Man and Wife*.

It seems a very foreign Intendment to suppose, “that the Mother had any *other* Right to the Settlement, than *as the Wife of Hankin*.” And if she was removed *as his Wife*, her Settlement has been *determined*. And the present Inquiry relating to the Children must *depend* upon her Settlement *as Wife to Hankin*.

Mr. Justice CHAPPLE.—An Order of Removal confirmed by the Sessions upon the *Merits*, is conclusive against every Body: And so it is also, if confirmed by them *without Appeal*. This Woman was removed *as Wife to Hankin*: We can't intend that she had any *other* Settlement. It seems to me to be an Estoppel.

Mr. Justice WRIGHT and Mr. Justice DENIS thought this exactly within the Case of *New Windsor and White Waltham*, Tr. 5 G. 1. B. R.* where it was determined “that if a Parish give a Certificate to a Man and his Wife, they are *bound* both as to the Man and Wife and also as to the Children: And they can not be admitted to dispute the Validity of the Marriage.” Now does not this *confirmed Order* bind as much as the *Certificate* binds? 'Tis a *Judgment* of a Court who had a proper Jurisdiction; and is therefore *as strong* as the Acknowledgement by a Certificate.

Mr. SOLICITOR GENERAL (STRANGE) would have distinguished this Certificate-case of *New Windsor* and *White Waltham* from the present: But

THE COURT said they could see no Distinction between them, and were satisfied that they ought not to be let in to controvert the Question of the Marriage over again. The Settlement of the Children is a *derivative* Settlement: It must and will *depend* upon the Validity of the Mother's Marriage, and can't be controverted without controverting the Marriage, which has been already admitted. Therefore

* See it in Sir John Strange 186.

Per Cur.

ORDERS AFFIRMED.

See *Rex v. Inhabitants of Silchester*, 18 Feb. 1766, Post, N^oN^o 68.

Rex v. The Inhabitants of Great Chart.

Monday 22d

Nov. 1742.

V. Sir John

Strange 1173,

S. C. (as to

Part of it.)

TWO Justices made an Order for the Removal of *Stephen Martin* from *Great Chart* in *Kent* to *Kennington*: And the Sessions, upon Appeal, quashed this Order.

The Order of Sessions is as follows—Upon an Appeal made unto this Court by the Inhabitants of the Parish of *Kennington* in this County, from an Order made by two of his Majesty's Justices of the Peace of this County, for removing of one *Stephen Martin*, a poor Man, from the Parish of *Great Chart* in this County to the said Parish of *Kennington*, there to be provided for; and upon reading the said Order and hearing of Counsel on both Sides, It is ordered by this Court that the said Order made by the said Justices shall be and is hereby, in all Points, quashed; because it appears unto this Court, "that *John Toke*, Esq; one of the Justices who "signed the said Order, was an INHABITANT in the said Parish of *Great Chart*—

N. B. Thus it stood originally: But by a Rule by Consent, made in *Trinity Term* last; the following Words were inserted at the End of it: viz. —

"At the TIME of his signing the said original Order; and was
"THEN ASSESSED AND PAID to the Relief of the Poor of the said
"Parish of *Great Chart*."

Then the Order of Sessions proceeds thus—

And it is further ordered by this Court, That the Costs of Maintenance of the said *Stephen Martin* since the Time of his Removal to the said Parish of *Kennington* SHALL ABIDE THE EVENT of the Cause; in Case the said Parish of *Great Chart* shall think proper, by another Order, to remove the said *Stephen Martin* to the said Parish of *Kennington*, and the Inhabitants of *Kennington* appeal to this Court from the same.

On

On *Tuesday* the 18th of *May* last a Motion was made, by Mr. *Ludford*, to quash this Order of Sessions.

His Objection was, that the Justices at Sessions had given a *bad Reason* for quashing the original Order: They do not enter into the Merits; but quash the Order, because *John Toke*, Esq; one of the Justices who made it was an *INHABITANT* of *Great Chart*. But though he was an *Inhabitant* of the Parish, yet he might have no *Interest* in the Matter of this Removal.

Upon shewing Cause on *Monday* 31st of *May*, two other Objections were added by Mr. *Ludford*.

2d Objection. The Order says—"The Justice was an *Inhabitant*," indefinitely; without alledging "that he was so at the *Time of making the Order*."

3d Objection. The Sessions have ordered the *Costs of maintaining* the Pauper since the Time of his Removal, to ATTEND THE EVENT of the Cause: Which they cannot do; they have no such Jurisdiction.

Lord Chief Justice LEE thought the Case not sufficiently stated; it being only said "that Mr. *Toke* (who signed the Order) *was an Inhabitant*." Special Orders ought to be as certain as special Verdicts. If the Justice was really interested, it was very improper for him to join in an Order of Removal from the Parish in which he was interested. It should be more fully stated. Probably, Mr. *Toke* was chargeable as an *Inhabitant*.

The RULE was therefore ENLARGED.

Afterward (on *Wednesday* 7th *July*) the Counsel for *Great Chart* offered to admit "that Mr. *Toke* was an *Inhabitant* there at the Time of making the Order; and was charged and chargeable to the *Poor*."

But the COURT said it ought to be *actually* amended, before they could determine upon it: For it would not be proper for them to give their Opinions upon an *imperfect* Order.—Therefore, for the present, they only made a Rule that the Order should be amended as aforesaid, by Consent.

THE ORDER being now amended; and it appearing "that Mr. *Toke* was an *Inhabitant* of *Great Chart* at the Time of making the Order, and CHARGED AND CHARGEABLE AND PAID TO THE POOR'S RATE;" the Counsel for *Great Chart* endeavoured to answer the Objection to his being both Judge and Party, by insisting on the PRACTICE, and also on the liberal Words of the positive

tive Law of 13 & 14 C. 2. which directs ANY of the Justices of the Division to exercise the Jurisdiction; and which has *no negative Words*.

* V. 18 Eliz. c. 3. § 2. They compared it to Orders of *Bastardy*; Where the Justices *next* to the *Parish-church* where the Child is born are singled out as the proper Persons: And yet they are most likely to be interested.

Such a *trifling* Interest as this must be, can't be supposed to bias a Magistrate.

This is little more than a *ministerial* Act: And an *Appeal* lies from it.

In *Corporations*, which often consist of only one Parish, and have exclusive Jurisdiction;—If the Corporation justice cannot remove the Pauper, he would be irremovable.

They also enforced their third Objection; and insisted that the Sessions could not order Costs to *attend an Event*; but must either give them or not give them, at the *Time* when they make their Order. To prove which, they cited *Rex v. Inhabitants of Nottingham*, in 5 G. 2.

Lord Chief Justice LEE had no Doubt, as to the *main Question*.

It is now agreed to be an Order made by two Justices, of whom one is *contributory* to the Maintenance of the Poor of the Parish *from which* the Pauper is removed. Therefore he most apparently is INTERESTED.

This is certainly a *judicial* Act. And no Rule of Law or of Reason is more fixed*, than “that a Judge ought to stand DISINTERESTED.” A Parishioner could not by common Law have been a Witness. And the Rule is *stricter* as to Judges than it is even as to *Witnesses*: For a Juror shall not be related to the Parties; but a Witness may. This making an Order of Removal has been always considered as a *judicial* Act. And the *Appeal* lying from it, makes no Difference: For still it is an *interested* Judge that has determined the Question *originally* and in the *first* Instance.

As to the Act of Parliament's mentioning “any Justice of the Division”—as a proper Person to exercise the Jurisdiction—the Construction must confine it to *legal* Justices: It does not take away *legal Exceptions*; nor mean to do.

* V. Brook's Abridgment, Title “Judges, Justices, &c.” pl. 1. (Juge & Partie.) and 2 Rolle's Abridgment, pa. 93. Title “Judges,” pl. 11. and Salk. 396, the Mayor of Hereford's Case. Also the Case of Dr. Chase, Chancellor of Oxford, in the Year-book of 8 H. 6. fo. 19 b. to 21 b. And Bro. Consauns, pl. 22. Bro. Patents, pl. 106. Hobart 85. Day v. Savadge. 8 Co. 118 a. Dr. Bonham's Case. Crompton's Just. of Peace 68. And 2 Salk. 607, the Case of Foxham Tithing.

The supposed Case of *Corporation-justices* is not likely to happen. But if it should, a proper Answer was given—"That the exclusive Jurisdiction might not perhaps hold, where it would occasion a *Failure of Justice*." The Case of my Lord *Derby*, in 12 Co. 114. and 4 Inst. 213. and Dr. *Chase's* Case, Chancellor of *Oxford*, in 8 H. 6. 19. are material to that Purpose. I think there would be no great Difficulty arising from that Supposition.

As to any *Inconveniences* that may be suggested from Imagination—"The keeping strictly to the Rule of not permitting a Man to be Judge in his own Cause," is of more Consequence than any such supposed *Inconveniences* can weigh against.

As to the Case of *Bastardy*—the two Justices are to be Justices in or next to "the Limits where the Parish-church is, within which Parish such Bastard shall be born*": But it does not say "IN the Parish" or "Justices interested." If there be no other Justice in the Parish, they may easily go to another Justice near it. I remember when my Lord *Raymond* would not give any Opinion in the Case of *Abbots Langley*, because it was his own Parish.

As to the Costs—I doubt the Justices at Sessions can not give them in this eventual Manner.

THE THREE OTHER JUDGES were unanimous, and held it to be a fundamental Rule of Reason and of natural Justice, "That no Man can be Judge in his own Cause." || Mr. *Toke* is here stated to be interested: He therefore could not be a Judge.

As to the third Objection—They held that Part of the Order of Sessions relating to these Costs, to be void.

Per Cur. unanimously—The Order of Sessions must be affirmed, as to that Part of it which quashes the original Order of the two Justices; but quashed, as to the latter Part of it, which or-

I can not help transcribing from the *Year-book* of 8 H. 6. a very singular Passage: It is in fo. 206. Serj. *Rolf*, who argued for the Chancellor of *Oxford*, says—"Jeo Vous dirra un Fable. En ascuns temps fuit un Pape: et aver' fait un graund Offence. Et le Cardinalz viendroient a luy, et disoient a luy—*Peccasti*. Et il dit—*Judica me*. Et ils disoient—*Non possumus; quia Caput es Ecclesie*: *Judica Te ipsum*. Et l'Apostoil dit—*Judico me cre-mari*: Et fuit combustus. Et en ce cas, il fuit son Juge demesne: Et apres fuit un Seint." Et issint (says the Serjeant) nest pas inconvenient, que un Home soit son Juge demesne.

Olaus Magnus (de Gentibus Septentrionalibus) tells a like Story of a Northern King, who was hanged in Pursuance of his own Sentence: But it don't appear that he was afterwards made a Saint.

ders the Costs of maintaining the Pauper to attend the *Event of the Cause*.

RULE accordingly.

But by 16 G. 2. c. 18. *sect. 1.* Justices of Peace are empowered to act in their own Parishes.

N^o 69. Rex v. The Inhabitants of the Township of Holbeck in the Burrough of Leeds.

Saturday 27th
Nov. 1742.

TWO Justices made an Order for the Removal of *Peter Orange, Mary his Wife, and John, Jane and Joseph their Children, from Holbeck to Gildersom, (both in the West Riding of Yorkshire:)* And, upon Appeal, the Sessions discharged their Order.

CASE—*Peter Orange* the Pauper was born in *Gildersom*, then the Place of his *Father's* Settlement. At the Age of nine, he was put APPRENTICE, by the *Churchwardens and Overseers of the Poor of Gildersom*, to *S. G.* of the same Place, by *Indenture*; to serve till he attained the full Age of twenty-four Years: But the said INDENTURE being produced, the same appears NOT to be upon STAMPT-Paper. The Pauper *P. O.* immediately went into the Service of the said *S. G.* who soon assigned him to one *Tb.* of *Gildersom* aforesaid; with whom he lived for some Years. *Tb.* assigned him to one *C.* of *Beeston*; with whom he served, in *Beeston*, as an Apprentice for ten Years, and till he attained the full Age of twenty-four. (But neither of these Assignments were by *Writing*.) That immediately after the said ten Years Service, and without ever departing out of the Service of his said Master, he was hired by the said *C.* for one year; of which, he served him about three Quarters of a Year, and then left the Service; and has since done nothing to gain a Settlement. That the other Persons have no Settlement in their own Right; but are only intitled to Settlements derivative from him. The Court of Sessions, being of Opinion "that *P. O.* gained a legal Settlement at *Beeston*, discharge the Order of Removal, and order Damages to be paid by the Township of *Holbeck* to the Township of *Gildersom*.

Upon Tuesday 17th of November 1741, a Motion was made, by *Mr. Denison*, to quash this Order of Sessions; because the *Indenture* was not stampd according to the Act of 8 Ann. c. 9. *sect. 39.* (which Act

Act is, by 9 Ann. c. 21. sect. 7. made perpetual, as to these Duties.) By this 39th Section, Indentures not stamped or tendered to be stamp, shall be void, and not available to any Purpose whatsoever; and the Apprentice shall have no Privilege of Freedom or using his Trade.

On shewing Cause upon the 27th of January following—after being argued by Mr. Legge, in Support of the Order of Sessions, and Mr. Denison and Mr. Cookson against it—

Lord Chief Justice LEE said it depended upon the Acts of Parliament; which they would look into and consider.

It was now again argued by Mr. Legge and Mr. Bootle.

Mr. Legge, who shewed Cause against quashing the Order of Sessions, said the Act of 5 W. & M. c. 21. was the first Act of Parliament that lays a Duty upon *Indentures; (viz. 6d. upon each Piece of Parchment on which Indentures are written;) and says †
 “it shall not be given in Evidence or admitted to be available in
 “any Court, till the Duty and also a Penalty of 5l. be paid, and
 “the Parchment or Paper be stamped.” But afterwards they may be, and in daily Practice are. But this Act does not make them void to all Intents and Purposes; as the 8 Ann. c. 9. does.

The 9 & 10 W. 3. c. 25. sect. 30. adds 6d. but expressly excepts the Indentures of poor Persons: “Except Indentures for binding poor Parish-children Apprentices.”

The 8 Ann. c. 9. is the only Act that makes unstamped Indentures void to all Intents and Purposes: But that Act has an express Exception as to Charities; viz. sect. 40. “Money given to put out Apprentices either by parishes or public Charities shall not pay any Duty.” Therefore the present Case rests on 5 W. & M. c. 21.

It is not like the Case of Cuerden and Leyland: Which was not the Case of a Parish Apprentice; but a Case where Money was paid by the Parent to the Master. [V. Sir John Strange 903; and ante, pa. 92 to 96.]

By 13 & 14 C. 2. c. 12. he gained a Settlement at Beeston, by residing in it forty Days irremovable. Indeed 3 & 4 W. & M. c. 11. sect. 3. requires Notice: But the 8th Section expressly excepts Apprentices bound by Indenture. This Person, therefore, being an Apprentice by Indenture (not void to all Intents and Purposes,) and having inhabited forty Days in Beeston, has gained a Settlement there within 13 & 14 C. 2. c. 12.

He moreover objected to the original Order. 1st, The Burrough of Leeds is not mentioned in the Body of the Order, but only in the Margin.

Margin. It does not appear, therefore, that the two Justices had *Jurisdiction* to make this Order.

2dly, The Words of Adjudication are—"was the last Place of legal Settlement;" instead of adjudging "that it is the last Place of legal Settlement" of the Pauper. It ought to have been in the present Tense.

Mr. *Bootle* denied that this Case was within the Exception of the 8th Section of 3 & 4 W. & M. c. 11. because this was *no* Indenture of Apprenticeship: It was *totally UNAVAILABLE* in any Court, having *never* been stamped. Therefore the Court of Sessions *could not* admit it as Evidence, or have any Regard at all to it.

He did not rely upon the other two Acts, of 9 W. 3. c. 25. or 8 Ann. c. 9. but altogether on 5 W. & M. c. 21. which is *not repealed* by either of them.

As to the two Objections to the original Order—1st, There is a sufficient Reference to the Margin. 2d, The Adjudication is agreeable to the very Words of the Statute.

Lord Chief Justice LEE.—As to the *Jurisdiction* of the Justices—I take it to be settled, "that in ORDERS, the Margin is to be considered as *Part* of the Order, and a *plain clear Reference* to "it is sufficient*." Here the Margin is—"Burrough of Leeds:" And the Direction is—"To the Churchwardens and Overseers of the Township of *Holbeck* in the said Burrough." This Reference is sufficient in an Order.

* *V ante*, No 12. N° 45.

As to the 2d Exception to the Order of the two Justices—The Act of 13 & 14 C. 2. c. 12. is—"Where they were last legally settled." This Adjudication "that *Gilderson* was the last Place, &c." is well enough: It must be taken, that it was so *at the Time of the Adjudication*.

As to the *main Point*, (which is upon the Order of Sessions)—There is *not* a sufficient *Service* under the *Hiring* for a Year. Therefore the Case must stand singly upon the Foot of the Service under the *Apprenticeship*.

Now as to *that*—I think the *Indenture* can *not* be available in Evidence in any Court, by the *express* Words of the Act of 5 W. & M. c. 21. *sect.* 11. which stands *unrepealed* by any of the subsequent Acts. And yet this Indenture was *necessary* Evidence to make out the Proof of a *Binding by Indenture*: For that *Binding* could be *no other-wise* proved than by the Indenture. But this Indenture, being *unstamped*, was *not admissible* as a Proof of the Thing: It could not be "given in Evidence, or admitted to be available." And yet it *must* be

be taken, upon the State of this Case, that the Indenture, though unstamped, *was RECEIVED in Evidence* by the Court of Sessions.

Therefore the Order of the two Justices made for removing the Paupers to *Gilderson*, *Peter's* original Settlement, ought to be affirmed; and the Order of Sessions quashed.

THE THREE OTHER JUDGES concurred; and held the Difference between *Orders* and *Indictments* to be, "that in *Orders*, "the *Margin* is to be considered as *Part* of the Order, and a *clear* "plain Reference to it is sufficient:" But in *Indictments*, the County must be expressed in the *Body*; and a Reference to the Margin is not sufficient. They thought the Adjudication in the *preterperfect* Tense ("was the last Place, &c.") to be well enough: And Mr. Justice *Wright* cited a Case in *P. 13 G. 1. B. R. Rex v. Inhabitants of Oulton**; where this Objection was overruled; as it also was, in the Case of *Hackney*, and many other Cases. And as to the *unstamped* Indenture—That could not legally be given in Evidence to the Sessions, or admitted to be *available* in Law or Equity: And therefore they ought to have had *no Regard* to it.

**V. Sess. Cases*
Ed. 1750.
Vol. 2. No.
76. pa 74.
Exception the
4th.

Per Cur. unanimously and clearly,

ORDER of Sessions QUASHED:

ORDER of two Justices AFFIRMED.

V. Post, No Rex v. Inhabitants of Llanvair Dyffryn Clwyd,
Wednesday 30th May 1744.

D d

Hilary

Hilary Term

16 Geo. 2. 1742.

No. 70.

Rex v. The Inhabitants of Madley.

Thursday 27th
Jan. 1742.

TWO Justices made an Order for the Removal of *Richard Johnson*, *Mary* his Wife, and *Elizabeth* their Daughter, from *Lillyshall* in the County of *Salop* to *Madley* in the County of *Stafford*: And the Sessions confirmed it, generally.

On the last *Friday* in *Michaelmas* Term 1742, *Mr. Jarvis* moved to quash these two Orders.

The Exceptions taken to the original Order, were these—

1st, It does not appear that the two Justices who made it were Justices of or for *any County*; it being only said “for the County of *Shropshire*.” And there is no such County as the County of *Shropshire*.

2d, The *Service* is not sufficiently stated in the original Order, which sets forth a Reason, that is *not a sufficient one*: Whereas if the Justices set out a Reason at all, it must be a good one. This is only, “That he *lived* a hired Servant, a whole Year.” Now, this he might do; and yet *not* have been HIRED FOR a whole Year.

3d, It is bad clearly, *as to the Daughter*; for not setting forth her *Age*. *Rex v. Inhabitants of Trinity Parish in Chester*, M. 11 G. 1. is in Point. [*V. Sessions Cases*, Edit. 1750, Vol. 2. N^o 74. pa. 70.]

In Answer to these Exceptions, it was said—

1st, “*Shropshire*” is the common Appellation of the County. 2dly, The Sessions do not give their Reasons: Therefore the Reasons upon which they proceeded must be taken to be *right ones*. However, he is stated to have *lived as a hired Servant for a whole Year*, and to have *received a Year's Wages*: And this is sufficient, to a common Intent, to mean a *Hiring and Service for a Year*. It is too

nice

nice a Criticism, to suppose that it might possibly be a Hiring for two separate Half-years. Besides, they expressly say, "that Madley was the Place of his last legal Settlement." 3dly, The Order states Elizabeth to be an Infant: And it must have appeared to the Justices, that she was so young a Child as that she ought to go with the Parent, for Nurture.

Lord Chief Justice LEE.—As to the third Exception—You must either set forth the Age of the Child, (to shew that it ought to go with the Parent for Nurture;); or adjudge it's Settlement: But neither of these being here done, the Order is naught as to that.

As to the first Exception—He held the Order to be well enough; and that the Appellation was common, both in Orders and in Acts of Parliament.

As to the second—He said he should not have thought this a complete State of the Case, if it had been stated on the Order of Sessions for the Opinion of the Court on a special State of the Case. But as this is only a Circumstance mentioned in the original Order, and is an unnecessary historical Declaration of the Man's living there for a Year; it does not import or infer that they had no other Evidence, or that this is the whole State of the Case. The Words are—"It appears that the Place of his last legal Settlement was at Madley; where he lived as a hired Servant one whole Year: We do therefore adjudge, &c."

THE THREE OTHER JUDGES concurring—

Per Cur. unanimously—

Both Orders were affirmed as to the Man and his Wife; but quashed as to the Daughter.

Rex v. The Inhabitants of Atherton. N^o 71.

ON Saturday last a Motion was made by Mr. Bootle, to quash an Order of Sessions confirming an Order of two Justices for the Removal of Ralph Harrison and Martha his Wife and John their Child from the Township of Barton in Lancashire, to Atherton, in the Parish of Leigh, in the same County. Thursday 10th Feb. 1742.

CASE—Ralph Harrison, being unmarried, and not having any Child or Children, and being legally settled in Atherton, was in the Year 1729, hired by Thomas Barlow, an Inhabitant of and le-

gally settled in Barton, FOR ONE YEAR, at 4*l*. Wages payable quarterly. And it was agreed between the said Barlow and Harrison, at the Time of the said Hiring, "that either the said Master or Servant should be LOOSE FROM OR AT LIBERTY TO DETERMINE THE SAID CONTRACT OF Hiring AT THE END OF ANY QUARTER of the said Year; Either of them giving a Month's Notice to the other." But it appears that no Notice of dissolving or determining the said Hiring or Service was ever given by either the said Master or Servant; and that the said Ralph Harrison continued in his Master's Service in Barton aforesaid, the whole Year. It also appeared, that the said Ralph Harrison, at the Time of the said Hiring, declared that the REASON of the said Hiring being made determinable at the End of any Quarter upon such Notice as aforesaid, was "that he WOULD NOT be hired SO AS TO LOSE his former Settlement."

On shewing Cause, now, against quashing the Orders, it was said, by Sir John Strange, that it is essentially necessary that there be an absolute Hiring for a Year. The Reason of it is, that it should appear that the Person came fairly into the Parish to get his Livelihood there and to do real Service, and not merely to gain a Settlement. But this Contract was determinable, by either Party, at the End of every Quarter: And the Intention of the Parties is most expressly specified, in the present Case, to be "that the Man was not to lose his former Settlement."

This Case differs from the Case of *Rex v. The Inhabitants of Stroude**, Tr. 7 G. 2. B. R. For there the Contract was originally for a Quarter of a Year, but the Maid was to continue for a Year if her Master and she liked one another: And the general Case of hiring Servants is much like that. But here are express negative Words: And a particular Time is fixed for the Determination of the Contract.

On the contrary it was said, that there appears upon the Face of this Order, a Design to evade the Law. In the Case of *Lidney and Stroude*, the original Hiring was but for a Quarter of a Year: This is for a whole Year. And in the Case of *Rex v. The Inhabitants of New Windsor*, H. 8 G. 2. B. R.† Colonel Meyrick hired the Servant for a Month upon Liking; and she was to go away on a Month's Wages or a Month's Warning: But, as she was to have 5*l*. a Year Wages, and continued above a Year, it was holden to gain a Settlement‡.

Lord Chief Justice LEE held it to be a good Settlement at Barton, upon the Authority of the Cases cited. And he observed that

*V. N^o 1. p. 1.
Rex v. Inhabitants of Lidney.

†V. ante, N^o 7. pa. 19.

‡V. ante, pa. 20, 21, 22.

that the Words of the Acts* of Parliament are complied with: For ^{* V. 3 & 4 W.}
here is both a *Hiring for a Year*, and a *Service for a Year* ^{& M. c. 11.}

The two Reasons that seem to be the Foundation for gaining a ^{set. 7 and}
Settlement of this Kind are the *Credit given to the Servant*, and the ^{8 & 9 W. 3.}
Service done by him. This conditional Agreement is inserted into the ^{c. 30. set. 4.}
Contract purely to avoid the Settlement. It don't seem to have been
intended to be put in Execution: It is plain, at least, that it never was
executed.

It appears, in the Event, most clearly, that this Liberty of putting
an End to the Service within the Year was never taken: The Ser-
vice did in Fact continue during the whole Year. And the Hiring is
expressly stated to have been "for one Year." It is therefore
stronger than the Case of *Lidney and Stroude*, or than that of *New*
Windsor. For, in the former, the first Hiring was but for a Quar-
ter of a Year; and in the *New Windsor* Case, the first Hiring was but
for a Month: But in both, it was, collectively, upon the whole Cir-
cumstances, taken to amount to a Hiring for a Year. Yet they were,
Both, to be conditionally void, as well as the present Hiring.

Therefore both Orders must be quashed.

Mr. J. WRIGHT and Mr. J. DENISON concurring—

Per Cur.* unanimously—

Both Orders QUASHED.

* Mr. Justice
Chapple was
absent.

Easter Term

16 Geo. 2. 1743.

Rex v. The Inhabitants of Stanfield.

Nº 72.

TWO Justices remove Jonathan Barrat, Mary his Wife, Eli-
zabeth, John, and Mary their Children, from the Township
of Stansfield in the Parish of Heptonstall in the West Riding of York-
shire,

Monday 16th
May 1743.
V. Sess. Cases,
Edit. 1750,
vol. 1. Nº
316. pa. 396.
S. C.

shire; in the Township of Spotland in the Parish of Rochdale in the County Palatine of Lancaster; which they adjudge to be the last Place of the lawful Settlement of the said Jonathan Barrat. This original Order is dated 12th April 1742. The Pontefract Sessions held 27th April 1742. upon an Appeal by Spotland, order the said Appeal to be respited to the next General Quarter-Sessions of the Peace to be holden by ADJOURNMENT at BRADFORD in and for the said Riding; and that the Churchwardens and Overseers of the Poor of Stansfield aforesaid do, on Notice of this Order, pay or cause to be paid to the Churchwardens and Overseers of the Poor of Spotland aforesaid the Sum of four Guineas per Costs of the said Appeal.

And at the General Quarter-Sessions of the Peace of the Lord the King holden at Skipton, in and for the said Riding, on Tuesday the 13th Day of July 16 Geo. 2. before, &c. that same Sessions of the Peace was adjourned, by the Justices last named and others their Fellows as aforesaid, until Thursday the 15th Day of the said Month of July in the Year aforesaid, at ten of the Clock in the Forenoon of the same Day, to be holden at Bradford, in and for the Riding aforesaid, to do further as the Court there shall consider, &c.

And on the said Thursday the 15th Day of July aforesaid, the same General Quarter-Sessions of the Peace was holden BY THE ADJOURNMENT aforesaid AT BRADFORD aforesaid, in and for the said Riding, before, &c.

At which said General Quarter-Sessions of the Peace continued and holden by the Justices last named at Bradford aforesaid, in and for the said Riding, on the said Thursday the 15th Day of July aforesaid in the Year aforesaid, before the Justices last named as aforesaid, it was ordered as follows, to wit

Upon the further and full Hearing of the Appeal, &c. it appears to this Court, That Jonathan Barrat, the Party removed, being an Inhabitant legally settled in Stansfield, came into the Township of Spotland in the Parish of Rochdale and County of Lancaster BY VIRTUE OF A CERTIFICATE. That by Deed not indented, bearing Date the 4th Day of February 1728, made between Richard Ashworth of Tongue-End in the Parish of Rochdale aforesaid Yeoman of the one Part, and the said Jonathan Barrat (by the Name and Addition of, &c.) on the other Part, the said R. A. did demise set and to farm let unto the said J. B. his Heirs Executors Administrators and Assigns 20 Square Yards of Land in Whitworth in the said Parish, To hold to the said J. B. his Executors Administrators and Assigns

rights for this Term of 999 Years, under the reserved Rent of 1 s. a Year. By Virtue whereof, the said J. B. entered to the said Premises, and afterwards erected a House and other Out-buildings upon the same; and by Indenture bearing Date the 9th Day of July 1730, made between the said Jonathan Barrat of the one Part and John Horsfall of Hoodley in Langfield in the County of York Yeoman of the other Part, the said Jonathan Barrat, in Consideration of 16 l. res. paid to him by the said John Horsfall, bargained sold set over and assigned the said Premises with the Buildings thereupon erected, unto said J. H. his Heirs Executors Administrators and Assigns, during the Residue of the said Term of 999 Years; to hold to the said J. H. his Heirs and Assigns: By Virtue of which said Assignment, he the said J. H. entered to the said Premises. And afterwards, by Indenture bearing Date the 16th Day of September 1731, made between the said Richard Ashworth of the one Part and the said J. H. of the other Part, the said R. A. leased set and to farm let to the said J. H. his Heirs Executors Administrators and Assigns the said 20 square Yards of Land before granted by him to the said J. B. and also, &c, and also, &c; To hold to the said J. H. his Heirs Executors Administrators and Assigns for the Term of 999 Years: By Virtue of which Grant, the said John Horsfall entered to the said Premises. That afterwards, an Uncle of the said Jonathan Barrat having died, and left some Money to the said J. B. he thereupon applied himself to the said J. Horsfall in order to purchase the said Premises by him the said Jonathan Barret before sold to the said John Horsfall, and also the said Premises granted by the said Richard Ashworth by the Deeds last above-mentioned. Upon which, the said J. H. and he came to an Agreement; and by Indenture bearing Date the 9th Day of July 1736, made between the said J. H. of the one Part and the said J. B. of the other Part (reciting all the Deeds before mentioned) the said J. Horsfall; IN CONSIDERATION OF FORTY-SEVEN POUNDS bona fide paid to him by the said Jonathan Barret, bargained sold assigned and set over unto the said Jonathan Barret his Heirs and Assigns all and singular the before-mentioned Premises, to hold unto the said J. B. his Heirs Executors Administrators and Assigns during the Residue of the said several Terms of 999 Years then to come.

That the said Premises all lie in the said Township of Spotland; and at that Time were worth the said Sum of forty-seven Pounds, and now are worth the Sum of sixty-three Pounds to be sold.

15d

By

By Virtue of which Grant, the said J. B. entered to the said Premises, and inhabited upon the same for two or three Years then next following.

That by Indenture bearing Date the 23d Day of May 1738, the said J. B. assigned over the said Premises to the above-named J. H. by Way of Mortgage, for the Sum of 45*l*.

That afterwards, the said J. B. was apprehended at Manchester in the County Palatine of Lancaster, as a VAGRANT; and was sent from thence, with his Family, by a Pass* bearing Date the 3d Day of April 1742 (a Copy whereof is hereunto annexed) to Stansfield in the County of York: To which Pass, NO APPEAL† was made at the then next General Quarter-Sessions of the Peace for the said County of Lancaster; but that the same Pass was duly || recorded there.

* V. 13 G. 2.

c. 24. sect. 7.

† V. Sect. 29.

|| V. Sect. 7.

That after he was so sent by the said Pass as aforesaid, and before the Quarter-Sessions next succeeding the Date of the said Pass, the said J. B. being poor and likely to become chargeable to the said Township of Stansfield, was removed from Stansfield aforesaid to the Town of Spotland aforesaid, by Virtue of the Order now in Question between the said Parties.

Upon Consideration WHEREOF, this Court [the Sessions holden by Adjournment at Bradford on 15th July] is of Opinion "That the last legal Settlement of the said Jonathan Barret is in Stansfield aforesaid;" and doth therefore order the said Order of Removal to be discharged.

On Saturday 13th November 1742, Mr. Fawkes moved to quash these Orders of Sessions; and obtained a Rule to shew Cause why they should not be quashed.

His Exceptions to the Order of Sessions made at Pontefract, on 27th April, were—1st, That the Appeal being given to the next Quarter Sessions (by 13 & 14 C. 2. c. 12. sect. 2.) they ought to have entered into the Merits of it themselves; and had no Power to adjourn it at all. 2dly, That, at least, they should have adjourned it to the next original Quarter-Sessions; but certainly could not adjourn it to a Quarter-Sessions to be holden by Adjournment. 3dly, That they had no Power to give Costs of the Appeal, without bearing it: The Costs of an Appeal must depend upon the Determination of the Merits of it. [V. 8 & 9 W. 3. c. 30. sect. 3.]

His 4th Exception was to the last Order of Sessions, made at Bradford on the 15th of July; and went directly to the Merits; viz.

"That

“ That their Opinion and Determination were *wrong*; for that *Jo-*
 “ *nathan Barret* had, by his Purchase and Residence upon it in
 “ *Spotland*, avoided his Certificate, and gained a Settlement there.”

On Friday 4th Feb. last, Mr. Fawkes moved to make his Rule absolute for quashing these Orders of Sessions; and was supported by Sir John Strange.

Mr. Gundry, on Behalf of the Township of *Spotland*, argued in Defence of them; and insisted on two Points; namely, the Merits, or true Place of Settlement; and the *not having appealed* from the *Pafs*.

1st, The Purchase did not gain a Settlement for this Certificate-man. For by 9 & 10 W. 3. c. 11. no Person can gain a Settlement by any Act WHATSOEVER, but by renting 10l. a Year, or by executing some annual Office in the Parish.

Now, voluntary PURCHASING of a Leasehold Estate of 999 Years Duration, for 47l. is not within Either of these Exceptions. It is manifestly not within the latter: And it can't be included in the Expression “ *taking a Lease of a Tenement*.”

2dly, The Justices could not make this Order of Removal during the Time for appealing from the *Pafs*. If the Settlement of this Man was not in *Stansfield*, they should have APPEALED from the *Pafs*; and not have sent them by an original Order, when the *Pafs* remained unappealed from. He also observed and objected, that in this original Order, neither the *Ages of the Children* are set forth; nor is there any Adjudication with respect to their Settlement. [V. ante, N^o 26, 29, 45, 57, 63.]

Lord Chief Justice LEE said he did not well see what the Court was to do upon this Case. For, the Order of Sessions states the Merits, and states the *Pafs* unappealed from, and their Opinion “ that the Man's Settlement was at *Stansfield*,” and then concludes to quash the Order of the two Justices; but does not specify for what Reason, they are of Opinion “ that his Settlement was at *Stansfield*.” It does not appear whether they founded their Opinion upon the Right of Settlement, or upon the *not appealing from the Pafs*.

As to the Purchase—I do not know that 9 & 10 W. 3. has been taken so strictly as Mr. Gundry would suppose. A Descent or a Devise, and I believe a Purchase too, have been determined to gain a Settlement; (after forty Days Residence,) upon the Foot of the Person's *not being removable from his own*, and as not being an Intruder within the Meaning of 13 & 14 G. 2. c. 12. So that whenever a Man has an Interest of his own, though under 10l. a Year, he shall

not be removable by *that* Statute. The present Question turns in-
 *9 & 10 W. 3. deed upon the Construction of the *Certificate-act*.
 c. 11.

Now though this Person was a *Certificate-man*, yet if he had come to this *by Act of Law*, it would have gained him a Settlement: And I believe it has been so determined in Case of *Purchases* too. I think, the same Construction has been made upon *this Act*, as upon that of 13 & 14 C. 2.

As to the *Costs*—The Order of Sessions made at *Pontefract* is wrong, as to *that* Part of it, certainly.

Mr. Justice WRIGHT and Mr. Justice DENISON concurred. They thought it had been determined “that a *Certificate-man* may gain a Settlement *by Purchase*,” in P. 5 G. 1. B. R. *Rex v. The Inhabitants of Burcleer*. They thought the *Pontefract*-order well enough as to the *Adjournment*; but bad, as to the *Costs*. Mr. Justice DENISON said, The Places of holding adjourned Sessions were very well known in *Yorkshire*.

LEE Chief Justice.—Before 9 G. 1. c. 7. † every Body that came into a Parish and made any Purchase whatsoever, was irremovable.

We seem to think the Sessions wrong, and the two Justices right, as to the MERITS. And if so, then it will stand upon the Question about the *Validity* of the Order of two Justices made during the Time the *Pass* remained *unappealed from*, and before the Quarter-Sessions next after its Date.

Per Cur.—

The original Order of two Justices was quashed as to the CHILDREN. [V. ante, N° 26, 29, 45, 57, 63, 70.] And the Order of the *Pontefract*-Sessions was quashed, as to the *Costs*.

As to the Rest—It was ordered to stand over, for the Opinion of the Court. And

Lord Chief Justice LEE now delivered their Opinion, as follows.

This Case stands for our Opinion on the MERITS only; which consist of two Parts, viz. 1st, The Right of the Settlement, and 2dly, The Conclusiveness of the *Pass* remaining *unappealed from*.

Now, as to the Right of the Settlement—We before declared that a *Certificate-man* does gain a Settlement by becoming irremovable, and

and so continuing for forty Days: And so was the Case of *Rex v. The Inhabitants of Burcleer*, P. 5 G. 1. B. R. [See that Case, in Sir John Strange 163, 164.]

2dly, As to the *Pass**—Upon looking into the Orders, I do not see that the Question does necessarily and properly arise. It is not a *Pass* whereby the Man was sent to *Stansfield* As the Place of his last legal Settlement; but only, generally, to send him thither. Indeed the Order of Sessions refers to a Copy of a *Pass*, to the Order annexed: By which Copy indeed, (when it comes to be looked into) it does appear "that he was sent to *Stansfield* As the Place of his last legal Settlement." But the *Bradford* Justices do not adjudge "that *Stansfield* was really so:" And we cannot take Notice of this Copy of a *Pass* annexed to the Order; which is no Part of the Record. Therefore, I say, the Question does not seem quite properly to arise,

"Whether a *Pass*† unappealed from, is to have the same Effect as "an Order of two‡ Justices unappealed from."

We have, however, considered that Question, "Whether by the late Act of 13 G. 2. c. 24. a *Pass* unappealed from be as conclusive as an Order of two Justices unappealed from:" And we are of Opinion "that this Act of Parliament is not to receive such Construction, or be considered in such a Manner, as to put a *Pass* upon the Foot of an Order of two Justices in this Respect."

In Case of an Order of two Justices, two other Justices can not make a different Order; because the Authority of each two would be equal; and therefore it would be a Clashing of the same Authority.

But that does not seem to be the present Case at all.

This Act of Parliament of 13 G. 2. was made only in Order to secure Vagabonds, and to send them to their former Places of Settlement or Birth, if to be found; if not, then to the Place from whence they came: And it operates upon such as are actually Vagabonds. But the Act of 13 & 14 C. 2. c. 12. was made with a

† V. 17 G. 2. c. 5. s. 7. for the Nature and Form of a modern *Pass*.
‡ One Justice only is sufficient to sign a *Pass*.
§ V. ante, p. 192.

Memorandum.

The Arguments upon the Conclusiveness of a *Pass* are pretty fully stated in N^o 74, and are worth perusing, before the present Resolution is read; because they lead regularly to it. They were prior in Time to the present Resolution; though the Resolution of that Case (of *Upmerden*) happened to be posterior to this of *Stansfield*.

¶ If their last Settlement appears, then they are to be sent thither: If it does not, then to the Place of Birth; or Father's or Mother's Abode, or to the Place where last found; according to the Directions of the Act. [V. s. 7.]

E e 2

View

Let A: Inverness to Order of Removal: And

Rex

View to *prevent* Vagabonds: And therefore it gave Power to *fix* them in their last legal Place of Settlement.

But the Authorities given by these two Acts are very different. On that Act of 13 & 14 C. 2. c. 12. though *Complaint* may be made to *one* Justice; yet *one* Justice can not *act*, singly: Here *one single* Justice may act. So there is a Difference too as to the *Manner* of sending them. Upon *that* Act, the Removal is to be at the Expence of the *Parish*: Here, of the *County*.

Another Thing that makes one believe the Parliament *did not intend* to put this Pass-warrant signed by a *single* Justice, upon the Foot of an *Order* made by *two* Justices, is, that though the *Reason* would be the same, yet the *same* Care is not taken as to the Provision on Appeal: For upon an Appeal from an *Order* of two Justices, there is a Provision for *Costs*; but *none*, on *this* Act. Here are **no* Costs given on Appeal: Yet that Provision would be just *as reasonable* as in the Case of an *Order* of two Justices, *if it had been intended* to be put upon the same Foot in all other Respects: But upon Appeals from *Orders* of two Justices, *Costs* are payable. Now it would be something extraordinary, and can not well be conceived to have been the Sense of the Legislature, that a Person's being sent by *one* Justice of Peace shall have the *same* Effect as if sent by *two*; and yet that there should *not be the same* Remedy upon an Appeal.

* V. f. 29.
|| Not by 13 &
14 C. 2: But
by subsequent
Statutes. V. 8
& 9 W. 3. c.
30. f. 3.

Therefore we are of Opinion that this Act made in Relation to Vagrants and the Manner of passing them, was in a *different* View from that which was calculated for the *fixing* of Settlements: And that this Act is only calculated to convey them to their Settlement, if it can be found; or (in Cases where their Settlement is not found) only to remove them to the Place of their Birth, or the Abode of their Parents, or where last found begging, &c; there to be provided for according to Law: And that Provision is, "to keep them *till* their last legal Settlement can be discovered, but *no longer*;" and *then* they will be subject to a Removal (by Virtue of the former Act) to their Place of last legal Settlement; on which Removal an Appeal will lie, *subject to Costs*.

And we hold that the Settlement at present in Question is at *Spotland*, where the Certificate-man made his Purchase.

Therefore the Order of Sessions must be quashed.

ORDER of Sessions (*made for discharging the original Order*)
quashed; ORIGINAL ORDER *affirmed*.

V. Post, N^o 74. as to a Pass unappealed from not preventing an Order of Removal: And N^o 75. as to a Certificate-person's gaining a Settlement by a Purchase.

Rex

Rex v. The Inhabitants of Normanton.

No. 73.

TWO Justices made an Order for the Removal of *Elizabeth* Monday 16th
May 1743.
the Wife of *Job Smith*, *John*, *Ann*, *Thomas* and *Mary* her
Children from *Repton* in *Derbysbire* to *Normanton* in *Leicestersbire*, as
the last legal Place of Settlement of *Job Smith*: And the Sessions con-
firmed that Order, generally.

On *Friday* the 11th of *February* last, a Motion was made, by Mr.
Eardley Wilmot, to quash these Orders: And the following Excep-
tions were taken by him.

1st, The Children do not appear, by this Order, to be the Chil-
dren of *Job Smith*, but only the Children of *Elizabeth Smith*: The
Words are—"her Children."

2dly, Their *Ages* are not set out; nor any *Adjudication* of their
Settlement.

3dly, A married Woman can not be removed to any Place but
the Settlement of her *Husband*: Otherwise, it would amount to a
Divorce. But it does not here appear that the *Job Smith*, whose
Settlement is adjudged to be in *Normanton*, is the same *Job Smith*
who is *Husband* to *Elizabeth*; it not being said "*the said Job*," but
only *Job Smith*, generally.

Mr. *Lloyd*, who now shewed Cause, allowed the Uncertainty whose
Children they were; *i. e.* who was the *Father* of them: But pro-
posed to send it back again to be clearly stated. As to the 3d Ex-
ception—he said, That as only one *Job Smith* was mentioned, the
Court would understand it to mean the same *Job Smith*.

THE COURT answered, That it could not be sent back; for
it was not a special Order, but a general one: But as to the 3d Ex-
ception—they declared they would intend him to be the same *Job*
Smith. Therefore

Per Cur.—(Mr. Justice *Wright* and Mr. Justice *Denison*, the
only Judges then in Court.)—

*The Orders must be quashed as to the four Children ;
and affirmed as to the Woman.*

N^o 74.

Rex v. The Inhabitants of Upmerden.

The same
16th May
1743.

ON Friday 5th Feb. 1741, a Motion was made, by Mr. Staniford, to quash an Order of Sessions confirming an Order of two Justices for the Removal of *Abigail Boyat*, and *George, William* and *John* her Children (aged, &c.) from *Illsfield* to *Upmerden*, (both in *Sussex*.)

* V. ante,
N^o 72.

THE CASE, on the Order of Sessions appears to be (in short) this—That *Abigail Boyat*, *George, William* and *John* her Children were last legally settled at *Upmerden*: But that they were found wandering and begging, and were apprehended in *St. Andrew's, Chichester*; and were carried before the Mayor, who, in Pursuance of the Statute of * 13 G. 2. c. 24. made a Pass under his Hand and Seal (which is set out verbatim.)

This Pass is dated 16th April 1741; and calls her "*Abigail Wife of Thomas Ballden*," with her three Children *George*, aged about eight Years, *William* about six, and *John* about two; and states it to appear upon Examination of her and others, "that the Place of the last legal Settlement of the said *Thomas Ballden her Husband* is in *Illsfield*; and that they are Rogues and Vagabonds within the Act:" Therefore the Pass orders them to be conveyed to *Illsfield*.

Then there is returned, from the Quarter-Sessions of *Chichester*, a Register and Record of the Examinations of Rogues and Vagabonds; and also of the Duplicates of the Passes signed by the Justices and transmitted by them to the next General Quarter-Sessions.

Note—This Quarter-Sessions appears to have been holden on 16th July 1741: And the Original Order of Removal now in Question was made 18th July 1741.

¶ V. ante, N^o
72. S. P.

It is also stated, That by Virtue of this Pass, the said *Abigail Boyat* and her said three Children, *George, William* and *John*, were carried to *Illsfield*, and received and kept there till 25th July last; and that the Parish of *Illsfield* did || NOT APPEAL to the Sessions of the County, or OTHERWISE REVERSE the said Pass: And that after such Pass, neither the said *Abigail, George, William* or *John* gained any new Settlement.

Mr. Staniford alledged that the Pass, unappealed from, was conclusive upon the Parish of *Illsfield*.

A Rule

A Rule was made upon the said 5th of February 1741, to shew Cause.

Upon shewing Cause, on Wednesday 7th of July 1742, it was ordered to stand over.

On Thursday the * 25th of November last, it was argued by Mr. Staniford and Mr. Lloyd, for Upmerden, against the Orders; and by Mr. Gundry and Mr. Henley, for Illsford, in Support of the Orders.

The Objections made to the Orders were (1st,) to the Order of Sessions That the *Pass unappealed from* was as *conclusive* as an Order of two Justices unappealed from: And (2dly,) to the original Order; because of the Adjudication of the last legal Settlement is in the *preterperfect Tense*. § V. ante, pa. 192. and Salk. 489. inter Inhab. of Thackham and Finsdon.

Mr. Gundry *contra*, answered the 2d Objection—That it was in the Words of the Act of 13 & 14 C. 2. c. 12. and said this Objection had been constantly over-ruled: And he particularly cited a Case in Tr. 7 G. 1. between Wenston and Kendon Parishes, where this Exception was taken and over-ruled. § V. ante, No. 69. pa. 200. Rex v. Inhabitants of Hockbeck.

Then he objected to the Pass—That it *did not appear* that the Person who made it was a Justice of Peace: He is only said to be "*Mayor of Chichester*." And if he was not a Justice of Peace, he has no Jurisdiction: For the Jurisdiction is given only to a Justice of Peace. And the Court will *not presume* a Jurisdiction: They will *not presume* that the Mayor of Chichester is a Justice of Peace.

But supposing him to be a Justice of Peace—a Pass does not conclude two Justices from making an Order of Removal. For 1st, this Act of 13 G. 2. was not made with the *same View* as the Act of 13 & 14 C. 2. which authorizes Orders of Removal; which are considered as Judgments. Under that Act, the two Justices must *adjudge* the Place of Settlement: But the Act of 13 G. 2. c. 24. does not at all seem to have been intended to be *final*; nor is any *Adjudication* required by it. Removals by two Justices under 13 & 14 C. 2. must be *upon Complaint of the Parish-officers*: But a Pass may be made on *any one's Oath*. Suppose a Person should be passed from Scotland—Where must they Appeal? There are no Appeals to Scotland. And to whom should they give Notice? for *no one* appears, on the Pass, to have *complained*. Nor are any *Costs of Appeal* provided for. There

* Observe that all these Arguments were prior in Time, to the Determination of the like Point in the *Stansfield Case*, No. 72.

are no Words in this Act of 13 G. 2. that amount to a Repeal of the Statute of 13 & 14 C. 2. c. 12: But *both* may stand together.

Mr. Henley added to what Mr. Gundry had said, as to the Pass—That *this Pass* was different from what the Act prescribed, as it did not shew his Jurisdiction as a Justice; nor was *upon Examination on OATH*: It is only, "*upon Examination*," (generally.)

If a Justice of Peace does not *shew* his Jurisdiction, his Act is void. In 5 Mod. 321. *The Inhabitants of Chidingfold v. The Inhabitants of Penshurst*, "*Quorum unus*" was omitted: And it was therefore held void. Salk. 473. S. C. Holt held so, even against some former Opinions, if not Resolutions: "For, being a special Authority, it must appear to be pursued." 5 Mod. 322. between the Inhabitants of *Walton* and *Chesterfield*—the original Order was—"Whereas Complaint hath been made *to Us*:" But they did not call themselves Justices: And it was therefore quashed. *Cartbew* 365. and 5 Mod. 149. *Rex v. The Inhabitants of Wootton Rivers*. The Justices have no Power to remove without Complaint of the Churchwardens: And for Want of such Complaint, the Order was held void, and quashed.

As to the Pass being *conclusive*, *not being appealed from*, and *no subsequent Settlement* being gained.—He said the Consequence of holding a Pass unappealed from to be conclusive, would be very considerable: Because most Paupers would come under some of the Descriptions of Vagrants in the Act of Parliament; and then, the Method of a Pass being less expensive than that of an Order of Removal, the Justices would always *choose* to proceed by Way of Pass, if it were to be equally effective; and the rather, because there could be no Costs on an Appeal from it, either for Charges of Suit, or for Maintenance. And indeed, No-body is *Party* to a Pass; whereas the Churchwardens and Overseers are Parties to an Order: And if a Pass was to be considered as an *Order*, a Parish might be concluded by an Appeal, when they were *not at all Parties*; as, for Instance, if upon an Appeal from the Pass, the Vagrant should be sent back again.

All the Statutes are consistent: They operate on the same Subject, but *diverso Intuitu*; and are similar to the Jurisdiction that temporal and spiritual Courts sometimes have; one, for Punishment of Crimes; the other, for Reformation of Manners.

The Act of 13 & 14 C. 2. c. 12. is differently worded from this of 13 G. 2.—The former, (in *sect. 2.*) expressly calls it a *Judgment*; "Persons aggrieved by such *Judgment* of the Justices:" But the

the latter only says "that any Persons aggrieved by any *Pafs* or other *Act* of any Justice or Justices may appeal to the next General or Quarter Sessions." *Seet.* 29. And this *Act* of 13 G 2. does not repeal that of 13 & 14 C. 2. It particularly specifies what *Acts* it intends to repeal.

The Method of removing Vagrants by a *Pafs* is *not* a *new* Thing: For it is given by 12 *Ann. stat.* 2. *chap.* 23. And yet there is no Instance of any Determination of such a Kind as they would support; namely, "that a *Pafs* unappealed from is as conclusive as an Order of two Justices unappealed from."

LEE Lord Chief Justice observed, here, That by 12 *Ann. stat.* 2. c. 23. *sect.* 4. if the Vagrant had obtained any legal Settlement, he should be sent to the Place of his last legal Settlement, "by such Order and in such Manner as by the Laws of this Realm other Persons likely to become chargeable to the Parish, are to be sent." Now that was by an Order of two Justices: And in *Seet.* 6. it is so specified—"and be sent by an Order of two Justices of the Peace to the Place of such his her or their last legal Settlement."

The Counsel against the Orders replied, As to the Exception taken to the *original* Order, That it may be true that *Upmerden* was once the Place of their last legal Settlement; and yet it might *not* be so at the Time of making the Order of Removal. The *Act* of 13 & 14 C. 2. c. 12. which was providing for a *future* Time, could express it no otherwise than as it did. And they alledged that there was a Case in *Salkeld*, expressly contray to that which Mr. *Gundry* had cited. [But *qu. where*: For I cannot find it.]

As to the Objection to the *Pafs*—The Mayor could not make the *Pafs* in Pursuance of the Statute, unless he was the Officer that the Statute required to make it; that is to say, a Justice of the Peace. And it appears by the Register of Examinations returned from the Quarter-Sessions, "that *John Dore*, Mayor, was a Justice of Peace." The *Act* requires such Register of Examinations and Duplicate of *Passes* to be kept at the Quarter-Sessions: And therefore it is sufficient if it appears by that, "that he was so."

Besides, the *Pafs* is *not* before the Court. If they would have objected to it, they should have removed it. But as it is, at furthest, only voidable, *not* void, it stands good at present.

However, they proposed to wave the Objections to the *original* Order, if the Counsel on the other Side would wave their's to the *Pafs*; so that it might come on upon the Merits.

As to the MERITS—Till 13 & 14 C. 2. None could be removed but as Vagrants; (for Settlements had then no Existence:) And that Act does not speak of the Warrants of Removal as Judgments. Indeed it would have remained as a Judgment, if the Act had not given an Appeal; which is in the Nature of a *Defeasance* to it: But still the former Removal must remain in Force till another destroys it. Here, the Act of 13 G. 2. directs the Pauper to be sent to the last Place of Settlement, by Pass: And as the Parish are obliged to receive the Pauper, it was certainly a Judgment: And the Act giving an Appeal, shews that this is a Judgment. The Words of the Pass are an *Adjudication*: "It appears to Us." The only Difference between the two Acts is, that one provides for one Sort of Poor; and the other, for another. How then can the *Views be distinct*, when the Ends are the same? Is not the Justice to judge of the Settlement, before he can send the Pauper to it? But it is said—"Suppose they came from Scotland"—Why then, the Act has not provided for that Case: And on the former Law, it was as difficult to send into Scotland, as it is on this.

As to the Notice—The last Act says the Appeal shall be "upon due Notice:" Which must therefore be given to the Parish-Officers.

As to the Costs of the Appeal not being provided for by this Act—They seem to have forgotten that neither are Costs of the Appeal given by 13 & 14 C. 2. And this is no Repeal of that Law; because it relates to a different Sort of Paupers; and does not operate on the same Subject.

Lord Chief Justice LEE—The whole Case appears now upon the Order of Sessions, which states the Pass in the very Words and Figures of it.

Now taking the Pass as stated, and taking it as an Order, (and so it must be taken,) I think the Objection to it material. And it is stronger here than in other Cases; because here the Act of Parliament directs the very Form of the Pass—"before me a Justice of Peace;" and the Form directs an Examination on Oath. But this Pass is not agreeable to the Form prescribed by the Act of Parliament.

All the Cases are "that the Jurisdiction of the Justice of Peace" must be set forth upon the Order; as his being of the Quorum, the Complaint, and such like.

But as this Pass appears only upon the Order of Sessions, it is not sufficiently before us: It ought to be removed by *Certiorari*. The being registered at the Sessions does not help it; because the Jurisdiction of

of the Justice must appear *upon the Face* of his Order: Nor will that Registering at Sessions help the Want of Examination *on Oath*. We should have had the Pass *before us*: We cannot quash it, unless it be removed *hither*.

The *main* Question will require Consideration. The Manner of Removal to the last legal Settlement, by a Pass, is *new*. And it is material, as to Costs, "whether this *may* be done." It is not material, "whether the Costs were given by 13 & 14 C. 2. or by a subsequent Act." Be that as it may, Costs are given on Orders of Removal; but *not* on these Passes.

These Passes were *not* considered as Orders, before this Act; nor were perhaps removable by Certiorari; But *now* they are Orders and are removable. The right Way would be, to have a Certiorari to remove the Pass: For we can not quash it, if it be not here. It is, at present, a subsisting Pass.

It will deserve great Consideration, before we establish these Passes to be upon the same Foot as Orders of two Justices of Peace.

Mr. Justice CHAPPLE, WRIGHT, and DENISON all agreed the Pass was *bad*; but that it could not be *quashed*, unless brought *hither* by Certiorari.

They did not however, after that Argument, enter into the Merits; but deferred doing so till the next Term.

And now, as they had this Morning determined the Point in the Case of *Rex v. The Inhabitants of Stansfield*,

MR. GUNDRY moved for the Opinion of the Court; though the Pass is not yet before them: Which is not now material, as the Point is settled—"that it would *not* be conclusive."

Lord Chief Justice LEE—To be sure, we can take no Notice of the Pass, unless it appears to the Court. But if it did, yet it would not stand in the Way of our affirming the Orders: Because the Pass is *only* intended to prevent the Vagrancy; and the Place of last legal Settlement remains to be determined afterwards.

We must determine in *this* Case consistently with our Determination in that of *Stansfield*: And consequently these Orders must be affirmed.

Per Cur.

BOTH ORDERS AFFIRMED.

Trinity Term

16 & 17 Geo. 2. 1743.

N^o 75.

Rex v. The Inhabitants of Deddington.

Tuesday 21st
June 1743.

V. Sir John
Strange 1193,
S. C.

TWO Justices made an Order for the Removal of *Edward Maynard, Elizabeth* his Wife, and *Edward, Thomas, John* and *Anne* their Children, from *Deddington* to *Duns Tew* in the County of *Oxford*: And the Sessions, upon Appeal, quashed this Order.

Note—Both these Orders were quashed by Consent on Thursday 11th Feb. 1741: And the Order of Sessions was sent back to be explained, in Order that the Court might have the Merits before them.

The amended Order states—That *Richard Maynard* (the Father of the said *Edward* who was removed with his Wife and Family by the said Order) about the Year 1719 had a Certificate from *Duns Tew* to *Deddington*, which acknowledged the said *Richard Maynard* and *Anne* his Wife and *Edward* their Son to be Inhabitants legally settled in *Duns Tew* aforesaid. And the said *Richard* and *Anne* and *Edward* their Son lived in the said Parish of *Deddington* many Years, under the said Certificate. It likewise appeared that during the Time the said *Richard Maynard* and *Anne* his Wife and *Edward* their Son lived in the Parish of *Deddington* aforesaid under the said Certificate, the said *Richard* purchased a Messuage or Dwelling-house in the Parish of *Deddington* aforesaid, which cost him 42*l.* and paid for the same with his own Money; and after the said Purchase, dwelt in and inhabited the said Messuage, as his own, for many Years. And it further appeared that the said *Edward Maynard* his Son lived with the said *Richard Maynard*, as Part of his Family, in the said purchased Messuage, for many Years as aforesaid, and never gained any Settlement of his own. And it further appeared, that the said *Richard Maynard* sold the said Messuage, five Years ago; and that *Edward* the Son had no Interest therein, but became chargeable to the said Parish.

rish of *Deddington*; and that *R. M.* the Father is living; but has now no House or Estate whatsoever in *Deddington* aforesaid. Whereupon they discharge the Order of the two Justices.

On *Friday* the 10th of this Month, Sir *John Strange* moved to quash this Order of Sessions. His Objection was, "That a Certificate-man had been indeed adjudged lately* to be capable of* *V. Ante, N° 72.* gaining a Settlement for HIMSELF, by making a Purchase." But it is carrying it too far, to say "that a Certificate-man's making a Purchase in the Parish shall fix his MARRIED Son and his Wife and all their Children there too."

Upon shewing Cause now against quashing this Order of Sessions, the the Cases of *Rex v. The Inhabitants of Stansfield*, in the last Term † and † N° 72. *Rex v. The Inhabitants of Burcleer* there cited, were insisted on; where it is settled "that a Certificate-person may gain a Settlement by Descent Devise or Purchase." And the Son gained a Settlement also, they said, as being Part of his Father's Family, and having never gained any Settlement of his own. And they cited *Salk. 427. Hard's Case*; and 521. *Cumner and Milton*; and *Rex v. Inhabitants of St. Austin's, Bristol, Trin. 8 W. 3.*

Lord Ch. Just. LEE.—The present Case is no more than this.—A Certificate was given, many Years ago, to old *Richard* and his Wife and *Edward* their Son: Afterwards, *Edward* marries, and has Children. *Edward* and his Wife and Children are the present Paupers. Old *Richard* made the Purchase in *Deddington*.

Now the Act of 9 & 10 W. 3. c. 11. mentions the Doubts that had arisen upon the former Act; and then declares "that no Settlement shall be gained by Certificate-persons, EXCEPT by the two Methods therein specified."

But I think the Case of *Burcleer* ‖ and *East Woodhay* is an Authority in the present Case: That Order has now been read; and it appears "that a Certificate-man's Wife's Father surrendered to her a Copyhold of 20s. per Annum:" And this was held a Settlement, tho' it was, most plainly, neither of the two Cases mentioned in the Act. I remember the Case—Lord Chief Justice *Pratt* held it more than equivalent to renting 10l. a Year. Mr. Justice *Eyre* held, "that the Construction of this Act of 9 & 10 W. 3. should be agreeable to that of 13 & 14 C. 2. c. 12. upon which a Man was irre-

‖ *V. Cases of Settlements*, pa. 90, Case 121. and Sir J. S. 163, 164. S. C. But Sir J. S. is under a Mistake in stating it to have been a Descent to the Wife: It came to her by the Surrender of her Father.

"movable

“movable from any Tenement of his own, though it should be under 10l. a Year.” I do not see that the Parish will be safer as to the Notice arising from renting 10l. a Year, than as to the Notice arising from a Purchase: There seems to be an equal Notoriety in both Cases. If this Act was to be taken so strictly as has been contended for, a Certificate-man could never gain a Settlement, though he should purchase 5000l. a Year.

One of the other Judges in that Case of *Barcleer* observed indeed “that it was not strictly to be considered as an Act of the Party himself; as he came in by the Surrender to his Wife.” But all the Court held it not to be within the Prohibition of the Act of 9 & 10 W. 3. the Man being irremovable as long as he had any Thing of his own, though he should become actually chargeable to the Parish.

And if this be so in the Case of the old Man *Richard Maynard*, then all his Rights will be communicated to those that derive from him: For, after gaining a Settlement by the Purchase, the Man himself is to be considered as an Inhabitant of the Parish in which he has gained it, in the same Manner as if he had actually rented a Tenement of 10l. a Year, or executed an annual Office: In which Cases it must be agreed “that legitimate Children, who have no Settlement of their own, must derive from their FATHER’S LAST legal Settlement.” (For the Settlements which the Father might have previous to the last are out of the Case, as much as if there never had been any such; they being extinguished by his gaining a new one, and having no more Existence.)

Therefore the Order of Sessions is a right Order; and the Rule for quashing it must be discharged.

Mr. Justice WRIGHT and Mr. Justice DENISON concurred with the Chief Justice in Opinion, and expressed themselves to the same Effect.

Sir John Strange observed, That it was stated “that the old Man’s Settlement in *Deddington* was at an End:” And therefore this might alter the Case. But

THE COURT said, It did not; because it did not appear that he had gained any subsequent Settlement. This was his last legal Settlement: and it may very well remain so, though he has no Estate there now.

Per Cur.—

Order of Sessions AFFIRMED.

See Post, N^o , *Rex v. Inhabitants of West Shefford*, Friday 8th November 1751, Mich. 25 G. 2.

Michaelmas

Michaelmas Term

17 Geo. 2. 1743.

Rex v. The Inhabitants of Wingham.

N^o 76.

TWO Justices made an Order for the Removal of *William Hunt*, (a Certificate-man actually become chargeable to the Parish of *Wingham*) together with *Elizabeth* his Wife and their five Children (born in *Wingham*) viz. *John* about fourteen, *George* about twelve, *William* about six, *Joseph* about four and a half, and *Elizabeth* about two and a half Years old, from *Wingham* to *Sellindge* (both in *Kent*;) And the Sessions, upon Appeal, quashed this Order of the two Justices.

Monday 14th
Nov. 1743.

V. Sir John
Strange 1199.
S. C.

Special Case states—That *John Hunt*, the Father of the said *W. Hunt* the Elder, being legally settled in *Sellindge*, in the Year 1704 removed with his Wife and Family into *Wingham*, and dwelt there under a Certificate directed to the Churchwardens and Overseers of *Wingham* and duly signed and sealed by the Churchwardens and Overseers of *Sellindge* and duly attested by two credible Witnesses and duly allowed and subscribed by two Justices of the Peace of the said County of *Kent*; and which Certificate, dated 2d Oct. 1704, and delivered by the said *John Hunt* to the Churchwardens and Overseers of *Wingham*, did own and acknowledge the said *John Hunt* and his Wife to be Inhabitants of, and to be Persons legally settled in the said Parish of *SELLINDGE*. That during the Time the said *John Hunt* and his said Wife and Family dwelt in *Wingham* under the said Certificate, the said *William Hunt* the Elder was born in *Wingham*, and was there educated and brought up. That the said *William Hunt* the Elder afterwards married the said *Elizabeth* his Wife, and by her hath had the said five Children, who were born in the said Parish of *Wingham*. And that the said *W. Hunt* the Elder hath lived in *Wingham* from the Time of his Birth to the Time of his said Removal by Virtue of the said Order, but hath NOT GAINED

ANY

ANY SETTLEMENT in his own Right in Wingham or elsewhere since his Birth.—

And it further appearing unto this Court [of Quarter Sessions] upon the Evidence of the said John Hunt, that one Day, during his Abode in the said Parish of Wingham under the said Certificate, having been from Home, his Wife, upon his Return Home, TOLD HIM “That a Person, whom the said John Hunt of his own Knowledge knew to be Borsholder of the Burrough of Wingham-street in the said Parish of Wingham, had left a wooden Tally for him at his House, AS A TOKEN that he the said John Hunt had been CHOSEN at the Court-Leet held for the Manor of Wingham, Borsholder for the said Burrough of Wingham-street,” (within which Manor the said Burrough of Wingham-street lies;) and that his Wife told him further, “That she had burnt the said Tally, before his Return Home;” but the said John Hunt was not present at the said Court-Leet; nor did he the said J. H. know of his own Knowledge, that he the said J. H. was chosen Borsholder at the said Court-Leet for the said Burrough; neither was the Record or Presentment of the Jury of the Leet, or any other EVIDENCE of the Appointment or Election of the said J. H. to the said Office of Borsholder, besides what the Wife of the said J. H. TOLD HIM the said J. H. as aforesaid, given or offered in Evidence to this Court upon hearing the said Appeal—

And it appearing likewise to this Court, That he the said John Hunt NEVER TOOK THE OATH OF OFFICE of a Borsholder for the said Burrough; and that he the said J. H. was NEVER SWORN into the said Office of Borsholder; but that within the Year after his said Wife told him the said Tally had been left at his House as aforesaid, he the said John Hunt DID EXECUTE ONE WARRANT of a Justice of the Peace for the said County, directed to the Borsholder of the said Burrough; and for the Space of a Year next after his said Wife told him the said Tally had been left at his House as aforesaid, the said J. H. was willing and ready to execute the said Office; and during the same Year, the said John Hunt had a House in the said Parish of Wingham, where his Family dwelt; but he himself (being by Trade a Carpenter) went to work at his Trade, during Part of the said Year, in Ramsgate, a Place about twelve Miles distant from Wingham and out of the said Burrough of Wingham-street and Parish of Wingham, and out of the County of Kent at large, and within the Liberties of the Cinque Ports; and often resided in

in *Ramsgate* aforesaid from *Monday* till *Saturday*; but resided within the said Burrough and Parish of *Wingham* greatest Part of the said Year—

And it appearing also that the said Burrough of *Wingham-street* is not of as large Extent as the said Parish of *Wingham*; but that Part of the said Parish of *Wingham* is within another Burrough; and that the said *John Hunt* never did any Act whereby he could gain a Settlement in the said Parish of *Wingham* or elsewhere out of the said Parish of *Sellindge*, save as aforesaid;—

And that the said *William Hunt* the Elder and his said Wife and Children, being actually become chargeable to the said Parish of *Wingham*, were removed by the said Order from *Wingham* to *Sellindge* as the Place of their last legal Settlement; and that the said *William Hunt* the Elder and his said Children or any of them never did any Act to gain a Settlement in the said Parish of *Wingham* or elsewhere, or to avoid the said Certificate; and that the Children of the said *William Hunt* were of the several Ages herein before mentioned and not more, at the Time of making the said Order—

Hereupon the Sessions quash the Order of the two Justices.

On *Thursday* 27th Oct. 1743, Sir *John Strange* moved to quash this Order of Sessions: And a Rule was made to shew Cause why it should not be quashed.

The Question turned upon 9 & 10 W. 3. c. 11. “Whether the Facts stated in the special Case did or did not amount to the EXECUTING an annual Office in the Parish, being LEGALLY PLACED therein.” The two Justices thought that they did not: The Sessions were of Opinion “that they did.”

The Counsel who now shewed Cause, argued that it is not necessary that he be appointed by the Parish; or that he be sworn into the Office: and they cited the Cases of *Gatton v. Newick*, H. 10 Ann. and *Rex v. The Inhabitants of *St. Maurice in Winchester*, P. 8 G. 2. * *V. ante*, B. R. and || *Karlington in Oxford v. Holy Trinity in London*, H. No 10. || *V. ante*, pa. 2 G. 1. In the last of which Cases, the Person appointed did not 30, 31. take the Oath till half a Year after he was chosen to the Office: So that he could not be said to have served the Office for a Year, if it was necessary to be sworn into it.

They said, it was not necessary to live constantly in the Place where he served the Office: It is enough, that it was his general Residence. Though he actually executed only one Warrant, yet he was willing and ready to execute all that had offered. It don't appear that there were any more.

The single Question is, Whether he was LEGALLY PLACED in the Office.

Now the *Court-Leet* may legally place him in the Office: And they did so. 'Tis true, the *Evidence* of his Election is not *completely* stated on either Side: But as far as it goes, it is in Favour of the Election; and is supported by an *actual Execution* of it, and continuing in it all the Year.

On the other Side (against the Order of Sessions,) it was argued that as he was *not sworn in at all*, he could not be *legally placed* in the Office: For what can "*legally placed*" mean, if this can be esteemed Evidence of a *legal Placing*? They cited 8 Rep. 77. b.

It is a Rule of Evidence, "That the *best Evidence* that can be "had must be produced:" Which in this Case ought to have been a Copy of the *Presentment* of the Jury of the Leet, which is a Court of Record; and Borsholders are, by Law, to be *presented* by the Jury of the Leet. Nothing but a local *Custom* to the contrary can alter that *Method* of Election. Now here is *no Evidence* of a *Presentment at the Leet*, or any *Record of the Election*: It is only *Hearsay*, out of the Mouth of his Wife.

Lord Chief Justice LEE observed, that it does not appear whether *John Hunt's Wife* was *alive* or not. If she was, her own Evidence at least ought to have been had; and not her Husband's Account of what she *told* him.

The Circumstance of *John Hunt's* going to work in another Parish, he laid out of the Case; as not affecting his Settlement, if otherwise a good one.

After having stated the Case—He said, that upon an Order wherein the Facts were specially stated, the Court must take it that *all* the Evidence which *appeared to the Sessions* was *stated by them*. Now the Act requires a *legal Placing* in the annual Office. And *what Evidence* is here stated? It is stated negatively, that there was *no Presentment, no Admission or Swearing*. So that here is *no Foundation* for supporting a *legal Placing*. And the Evidence of being *told of the Tally* is nothing that can merit any Regard. It is yet worse, if the Wife be *alive*; because if so, she should have given it *herself*.

Then he is to be considered as *Part of his Father's Family*, as to *Resorting back* to the *Father's Settlement*, though he is a married Man; for he has gained *none of his own*; and, being actually chargeable, must be sent to that which he derives from his Father, who was certificated from *Sellindge*.

As

As to the gaining a Settlement by executing an annual Office in the Burrough which is not co-extensive with the Parish—It was settled in the Case* of *St. Mary and St. Lawrence, Reading*, “That * *M. 9 Ann. B. R. V. Lucas 13.* “ it was executing an annual Office in the Parish; though the Burrough extended further than the Parish of *St. Lawrence*.” But that is not material to be considered here; because the Evidence of the *legal Placing* in the Office is found in the Negative: For, as *no Presentment* was offered in Evidence, we must take it that there *was no Presentment* at all.

Therefore the Order of the two Justices must be confirmed; and the Order of Sessions quashed.

THE THREE OTHER JUDGES concurred in the Opinion “ that there appeared *no Sort of Evidence*, none such at least as could “ be regarded, of the *legal Placing* in this Office:” But, on the contrary, the *material* Part of the Evidence was in the Negative, and shewed that he was *not* legally placed in it.

Per Cur.—

RULE made ABSOLUTE for QUASHING the Order of Sessions and AFFIRMING the Original Order.

Easter Term

17 Geo. 2. 1744.

Rex v. The Inhabitants of Hilperton.

Nº 77.

TWO Justices made an Order for the Removal of *Richard Hicks, Mary* his Wife, and *Mary* their Daughter from *Charterhouse Hinton* in the County of *Somerset* to *Hilperton* otherwise *Hilprington* in the County of *Wilts*: And, upon Appeal, the Sessions confirmed this Order.

Tuesday 17th
April 1744.

G g 2

The

The special State of the Case was this—*Richard Hicks*, the Pauper named in the said Original Order, Husband and Father (respectively) of the other Paupers therein named, was born in the Parish of *Freshford* in the said County of *Somerset*, and legally settled there.

The said *Richard Hicks*, when about the Age of ten Years, by Indenture bearing Date some Time in the Year of our Lord 1714, was bound an Apprentice to one *William Hudd* since deceased, who then dwelt in the said Parish of *Hilperton* otherwise *Hilprington*, and followed the Trade of a Broad-Weaver there: And accordingly, the said *Richard Hicks*, the Day after the Execution of the said Indenture, entered into the Service of the said *W. Hudd* of *Hilperton* aforesaid, in Pursuance of the said Indenture, and continued in the Service of, and with the said *William Hudd*, in *Hilperton* aforesaid, to the Time of the Death of the said *William Hudd*, which happened, at *Hilperton* aforesaid, in about five Years after the Date of the said Indenture, and during the Continuance thereof.

That the said *William Hudd*, before the Execution of the said Indenture, upon his the said *William Hudd*'s first coming into the said Parish of *Hilperton* otherwise *Hilprington*, did procure and bring with him a Certificate bearing Date the 9th Day of *December* in the Year of our Lord 1712, executed signed and sealed by and under the Hands and Seals of the then Churchwardens and Overseers of the Poor of the said Parish of *Charterhouse Hinton*, attested and subscribed by three credible Witnesses, and allowed of and subscribed by and under the Hands of two of the then Justices of the Peace of and for the said County of *Somerset*, and directed to the Churchwardens and Overseers of the Poor of the said Parish of *Hilperton*, in the Words and Figures following, that is to say—

“ *Somerset*—To the Churchwardens and Overseers of the Poor of
 “ the Parish of *Hilperton* in the County of *Wiltes*, and to every and
 “ either of them—These are to certify you and every of you That
 “ We the Churchwardens and Overseers of the Poor of the Parish
 “ of *Charterhouse-Hinton* in the County of *Somerset* doe, and every
 “ and each of us doth hereby declare that *William Hudd*, Broad-
 “ Weaver, and *Deborah* his now Wife, and their Children, of our
 “ said Parish of *Charterhouse-Hinton*, now are Inhabitants of our said
 “ Parish, and so shall, from Time to Time and at all Times here-
 “ after be taken and acknowledged to be Inhabitants thereof: And
 “ we doe hereby promise unto you and your Successors in your se-
 “ veral Offices, That they the said *William Hudd* and *Deborah* his
 “ Wife,

" Wife, and the Children they now have, or the Children that
 " they shall or may have, shall return or be returned and pro-
 " vided for, as Inhabitants of our said Parish, without putting you
 " or your said Parish of *Hilperton* to any Charge concerning them.
 " In Witness whereof we have hereunto set our Hands and Seals
 " this 9th Day of *December Anno Domini 1712, Anno R R Annæ*
 " *D G Magnæ Britanniae &c, undecimo. John + Scott. Robart*
 " *+ Hitchman Churchwardens. William Grant + Henry Fran-*
 " *ses + Overseers. Attested by us—Witness—Edward Willsbear.*
 " *Daniel Hiscock. James Petters.*

" *Somersett Js.* We whose Hands are hereunto subscribed, being
 " two of her Majesty's Justices of the Peace for County aforesaid,
 " doe allow of the above Certificate, this 27th Day of *April Aº*
 " *Dom. 1713. Jo. Lansdown. Rob. Smith.*"

Which said Certificate the said *William Hudd*, upon his first com-
 ing into the said Parish of *Hilperton* otherwise *Hilprington*, previous
 to the Execution of the said Indenture, did deliver unto the then
 Churchwardens and Overseers of the Poor of the said Parish of *Hil-*
perton; and did continue in the same Parish, under the said Certifi-
 cate, to the Time of his the said *William Hudd's* Death.

That the said *Richard Hicks*, after the Death of his Master, serv-
 ed no further under the said Indenture, nor did any other Act where-
 by to gain a Settlement.

And this Court [the Sessions] being of Opinion " That the said
 " Certificate was not conformable to Law," this Court is therefore of
 Opinion " that the said Certificate was no Obstruction to the said *Ri-*
 " *chard Hicks's* obtaining a Settlement by Virtue of the said *Inden-*
 " *ture and Service thereunder* as aforesaid in the said Parish of *Hil-*
 " *perton* otherwise *Hilprington*;" and doth confirm the said original
 Order: And the same is hereby confirmed accordingly.

On Saturday 11th of *Feb.* last, a Motion was made by Mr. Gould
 to quash these Orders: For, the Certificate is good within 8 &
 9 *W. 3. c. 30.* Consequently, by 12 *Ann. stat. 1. c. 18. sect. 2.* the
 Service of the Apprentice to a Certificate-man is not available to gain
 a Settlement.

The only Exception that can be taken to the Certificate is, that
 the Words "legally settled" are not in it. But there are Words
tantamount. The Certificate admits them to be *Inhabitants* of
 their Parish of *Charterhouse-Hinton*: And it shall be taken most
 strongly against the Makers of it.

This

This is a new Case: And therefore none can be cited on one Side or the other.

Mr. Gundry, on the same Side, said the Question depended singly upon the Goodness of the Certificate.

A Rule was then made to shew Cause: And now it was, upon Mr. Gould's Motion,

MADE ABSOLUTE.

Note: *There was no Defence.*

No. 78.

Rex v. The Inhabitants of Beccles.

Tuesday 1 May
1744.

V. Sir John
Strange 1207.
S. C.

TWO Justices made an Order for the Removal of *Thomas Elem* and *Ann* his Wife from *Lowestoft* to *Beccles* (both in *Suffolk*;) And the Sessions, upon Appeal, confirmed that Order.

Special Case—*Thomas Elem*, the Person removed, being legally settled at *Beccles*, let himself, some short Time before *Michaelmas* 1732, to *Samuel Corbett* a Blacksmith, in *Lowestoft*, at the Wages of 3*l.* or 3*l.* 10*s.* to serve him there for one whole Year from the said *Michaelmas* to the *Michaelmas* following, to RECEIVE THE SAID WAGES from Time to Time as he wanted; and accordingly entered upon his said Service on the *Michaelmas* Day, and continued his said Service until the *Michaelmas* following: And then he again let himself for another Year to his said Master, and continued about ten Weeks; when he and his Master agreed to part, and actually did part.

But it further appeared to the Sessions, That the said *Thomas Elem*, within the Year, WORKED, with his MASTER'S CONSENT, for a WEEK, with one *Lincoln*, as a Journeyman-Blacksmith; and, with the like Consent, with one *Lawes*, for a FORTNIGHT; and at some Times, not exceeding twenty-four Hours at any ONE Time, nor above THREE DAYS IN THE WHOLE, within the said Year, with his Master's Consent, did go off TO SEA, in a Fishing-boat belonging to Mr. *Manclark*. And it was agreed between the said *Elem* and his Master, at the Time of such Absence, that the said *Elem* should have all the Wages he then earned, the said CORBETT DEDUCTING during the Time of such Absence in Proportion to his aforesaid Wages of 3*l.* or 3*l.* 10*s.* And that the said *Lawes*, *Lincoln* and *Manclark* severally paid him the said *Elem* for the Time he so worked with them; and the said *Elem* allowed the said *Corbett*, out of his said Wages, for

for the Time of his said Absence: So that Corbett received no Part of the Wages the said Elem earned during his Absence; but only deducted a proportional Part of the said Wages of 3*l.* or 3*l.* 10*s.*

Therefore the Court [of Sessions] is of Opinion "that the said Elem hath not gained any legal Settlement at the Parish of Lowestoft afore said, by Virtue of the afore said Service;" and doth affirm the said Order.

On Saturday the 14th of April last, a Motion was made by Mr. Staniford and Mr. Lloyd, to quash these Orders; and the Court did not seem then to doubt of its being a good Settlement in Lowestoft.

RULE to shew CAUSE.

Cause was now shewn: And it was argued.

In Support of these Orders, it was urged by Mr. Pilsforth and Mr. Vanbeythuisen, Counsel for Lowestoft, that what was here stated amounted to a DISSOLUTION of the Contract: And when the Contract was once dissolved, it could not be taken up again and continued. It appears also, from the Manner of the Wages being payable, (not at the last, but at particular precedent Times,) that he was no more than a Journeyman to Corbett.

The Act of 3 & 4 W. & M. c. 11. has been construed strictly, with Regard to Hirings: 2 Salk. 535. the Case of Dunsford and Ridgwick. And there is the same Reason for Strictness with Regard to Service.

In M. 1 G. 1. B. R. between the Parishes of *Pawlet and Burnham—the Settlement was holden to be in Burnham; because the Servant went away three Weeks before the End of the Year, by Consent of the Master, and 6*s.* was abated of his Wages. *V. Foley 206. and ante, pa. 69, S. C. cited.

Lord Chief Justice LEE observed that the whole Absence of the present Pauper in the first Year, was just three Weeks and three Days, by the Consent of his Master: And the Money deducted out of his Wages was to be in Proportion to his Absence.

First, It appears that the Parish of Lowestoft have had all that the Words or the Intention of the Act of Parliament require: For, there was a clear Hiring for a Year; and, taking in the ten Weeks of the second Year, a Service for more than a Year.

We can not intend any Thing of a FRAUD: For none is stated.

The Question depends upon †two Acts of Parliament. Upon the † Negative Act, it is not necessary that the Service be with the same Person: It is sufficient if it be with the Successor in the Farm, or the Assignee. Therefore this Act has not been taken so strictly. †V. 3 & 4 W. & M. c. 11. 8 & 9 W. 3. 30. †8 & 9 W. 3. c. 30.

Then

Then the Agreement about the *Payment of the Wages*, "*as the*
Servant might want it"—will not vitiate the Contract. Nor will
 the Contract be dissolved by any Thing here stated. It is only a Li-
 cence of Departure for a certain Time: The Contract remains.

Indeed where the Servant departed, by Consent of both Parties three
 Weeks before the End of the Term, the Contract was dissolved; as in
 the Case of *Pawlet and Burnham*. [*V. ante*, pa. 69.]

And according to the Cases that have been determined, the sub-
 sequent Service of *ten Weeks* may be taken in, in the present Case.

But the Service by the Master's Consent, with another Person, was
Service of the Master: It is not necessary that the Service be with the
 same Person. Nay, if it had been without the Master's Consent, yet
 the Absence had been dispensed with, by the Master's thus receiving
 him again.

Therefore the original Order is wrong; and both Orders must be
 quashed.

THE THREE OTHER JUDGES concurred in Opinion "That
 this was no Dissolution of the Contract, but a mere Lending of the
 Service of his Servant." Than which, nothing is more customary,
 in Harvest-time.

Per Cur. unanimously—

Both Orders QUASHED.

V. ante, N^o 14. N^o 20. Post, N^o 85, *Rex v. Inhabitants*
of Goodneston: 1st July 1745. And the Cases referred to at
 the Bottom of Page 48.

N^o 79.

Rex v. The Inhabitants of Luffington.

The same
 Tuesday 1st
 May 1744.

TWO Justices made an Order for the Removal of *Eleanor* the
 Wife of *William Hellyar* from *Symondsbury* in *Dorsetshire* to
Luffington in *Somersetshire*: And the Sessions, upon Appeal, confirmed
 that Order.

Special Case—About eighteen Years since, one *William Hellyar*
 was married to *Mary Hembury* of *Curry-Rivel* in *Somersetshire*, Spin-
 ster, at the City of *Bath*, by a Person in a black Coat and Band;
 whom the said *Mary Hembury* apprehended to be a Clergyman, but
 has since been informed that he was a Layman. That the matrimo-
 nial Ceremony of the Church of England was duly read over; and a
 Ring

Ring was properly made Use of; and the same was performed in a private Room in a Dwelling-house; and not in a Church or Chapel. That in Pursuance of such Marriage, the said William Hellyar and Mary cohabited as Man and Wife for the Space of nine or ten Years; but have not lived together since. That on or about the 10th of June 1742, the said William Hellyar was regularly married to the said Pauper Eleanor in the Parish-church of Symonds bury, by a Clergyman in Holy Orders, according to the Form of the Church of England, during the Life of the said Mary, by Virtue of a Licence obtained by the said Hellyar for that Purpose. And the Sessions thereupon confirm the original Order.

On Wednesday 1st February last, a Motion was made by Mr. Gundry, to quash these Orders: And a Rule was made to shew Cause.

1st Objection—It does not appear by the original Order, nor by the Order of Sessions, that *William Hellyar's Settlement was at Luffington*: Which ought to appear, in Order to make the Removal of *Eleanor* thither, *in the Character of his Wife*, to be good.

2d Objection—His Marriage with *Mary Hembury* was a good Marriage: Consequently that to the *Pauper* was null.

Mr. Henley and Mr. Gould now shewed Cause. As to the first Exception—It is adjudged by the two Justices “that *Eleanor's* last legal Settlement was in *Luffington*:” And the Sessions have not quashed this Order. Therefore it stands: And it must be good as *her original Settlement*; which it *might* be originally, and independently of *William Hellyar's* Settlement. The Order of the two Justices does not speak of her as a married Woman, but absolutely. So that this Exception will not affect the Order.

As to the 2d Exception—A Marriage, in Order to have a TEMPORAL Effect, must be according to the Ceremonies of the Church of England. The Case of *Haydon v. Gould*, in 1 Salkeld 120. is an express Determination “that a Marriage celebrated by a Person not in Orders is ineffectual and void; and this, even in the Case of a Marriage between two Dissenters: For that Marriage (which was by a Layman) did not intitle to Administration. I do not comprehend the Force of the Distinction made in that Case relating to the Wife and Children, “that perhaps *they* might intitle themselves, by such Marriage, to a temporal Right, though the *Husband* could not.”

Besides that Determination itself, in *Salkeld*, there is a Case in *Swinburn* cited, where such a Marriage was ruled void: And the Manner and Form of Pleading is specified; which Both shew the contrary to that Distinction.

H h

As

As to *Wigmore's Case* in 2 *Salk.* 432. where *Holt* says "that by the Canon-law, a Contract *in verbis de præsenti* is a Marriage; and the Spiritual Court can not punish for Fornication"—In 6 *Mod.* 155. *Collins v. Jeffat* he says the direct contrary, viz. "That they are punishable by ecclesiastical Censures, where the Contract is *per verba de præsenti*, if they cohabit before Marriage *in facie Ecclesiæ*." So that in *Wigmore's Case* he can only mean what he here explicitly says with Respect to the very Parties themselves, that they could not release one another, or dissolve their own mutual Agreement."

* V. Sect. 3.

† Confirmed

by 13 C. 2.

4. 11.

But it is plain that the Law does not consider these Marriages as effectual to any temporal Purpose. 1 *Siderf.* 13. *Sir Robert Pain's Case.* And 2 & 3 *E. 6. c. 21.* shews that the Parliament took the Common Law so; as appears by the * Proviso therein. The Statute of 12 C. 2. c. 33.† was made to confirm Marriages made by Justices of Peace during the Usurpation. And 6 & 7 *W. 3. c. 6.* 7 & 8 *W. 3. c. 35.* and 10 *Ann. c. 19.* are all confined to Marriages by Persons in holy Orders.

From whence, it is plain that the Parliament did not look upon Marriages by Persons not in holy Orders to be binding.

Indeed, as to *Diffenters*—Their Case may be different; as being virtually dispensed with, by the Toleration-act, from complying with the Common-Prayer Book in this Respect. In 3 *Lev.* 376. *Hutchinson and Ux. v. Brookebanke*, a Prohibition went, and the Plaintiff was to declare upon it, so that the Law might be tried upon *Demurrer.* *Salk.* 437, is S. C.

But there is no Case, where a Marriage by a Layman has been holden good.

Indeed, in Ejectment, Cohabitation may be urged as an Evidence of legal Marriage.

Mr. *Gundry*—contra, for quashing the Orders, enforced his Exceptions to them.

1st, This is an undue Removal of *Eleanor* to *Luffington*, as the Wife of *Hellyar*; when it is not adjudged that *Luffington* was his Place of Settlement.

The Order of Sessions contains the whole of the Case; and then says that the Sessions, on the Case as above stated, are of Opinion so and so. This Court can only judge upon the Facts that they have returned up to them.

2dly, The Gentlemen say "that no Marriage is good, unless by a Priest in holy Orders."

But

But *Wigmore's Case* shews that the *Contract in verbis de presenti* is the *Essence* of Marriage.

They would infer from the Acts of Parliament, "that the Legislature have always looked upon these Marriages as null and void."

But 2 & 3 E. 6. is not to the Purpose: And 12 C. 2. c. 33. was made for quieting the People's Minds. The other Acts of Parliament rather countenance them, than otherwise. Indeed there is a Proviso in one of them "that they shall not be of *greater Force* *V. 6 W. 3. c. 6. Sect. ult. & penult.* "than they were before." But, upon the whole, these public Acts are a *tacit ACKNOWLEDGEMENT* of their Validity.

The Case of *Tarry v. Browne*, in 1 *Siderf.* 64. is for me—All that the Court say is, that "if the Marriage had been by Force and Dureffe, it had been void and no Marriage at all."

In the Case of *Haydon and Gold*, it seems to be admitted that they might be intitled to all *temporal* Rights; though not to *spiritual*.

Bunting's Case, in *Moor* 169, proves that the *Contract makes the Marriage*: And the second Marriage made after a Contract *per verba de presenti* was held not only voidable, but absolutely void.

The Husband could not marry again, without being liable to be indicted. 3 *Inst.* 88.

Besides, it does not appear that the Person who married *Mary Hembury* was NOT in holy Orders. She apprehended him to be so; and was only informed since, "that he was not so."

This is the lowest Interest that a Woman can derive from Matrimony.

Lord Chief Justice LEE held the 2d Point to be of great Consequence, and to require great Consideration: But he thought the Case very imperfectly stated.

As to the Person in a black Coat and Band &c.—It is ONLY EVIDENCE of the Circumstances of the first Marriage: Whereas the Sessions should have DETERMINED whether the Marriage was by a Clergyman in holy Orders OR NOT. But this they have not done.

Mr. Justice CHAPPLE too held the State of the Case to be imperfect.

Therefore, FOR THE IMPERFECTION OF THE STATE OF THE CASE—

Both Orders were QUASHED.

Mr. Justice WRIGHT and *Mr. Justice DENISON* were silent
Mr. HENLEY hinted at the sending the Orders down again
 to the Sessions, to have the Case more completely stated.

But *LEE Chief Justice* said—Both Orders must be quashed.*

* *N. B.* They certainly were *not quashed on the Merits*: And no particular Reason was given why they were quashed at all. It does not appear to me, why the Court did not refer the Case back to the Sessions, to be more fully stated; as has been done in numberless other Instances.

Trinity Term

17 & 18 Geo. 2. 1744.

N^o 80.

Rex v. The Inhabitants of Llanvair Dyffryn Clwyd.

Wednesday
 30th May
 1744.

TWO Justices made an Order for the Removal of *Catharine Edwards* (the Widow of *John Edwards* lately deceased,) *Elizabeth, Catharine, Anne, Edward* and *Thomas* their Children (aged 12, 10, 8, 6 and 3 Years respectively) from *Llantidan* to *Llanvair Dyffryn Clwyd* (both in *Denbighshire*;) And the Sessions, upon Appeal, confirmed that Order.

Special Case—The said *John Edwards* was, about two Years ago, by Virtue of an Agreement in Writing or *Indenture* duly entered into between *John Jones* of the one Part, and one *Edward Jones* Father of the said *John Edwards*, for and on the Part and Behalf of the said *John Edwards* his Son, then an Infant, of the other Part, thereby put and placed to be an Apprentice to the said *John Jones* for and during the Term of three Years, to learn his Art or Trade of a Taylor: And by the said Agreement or *Indenture*, the said *John Jones* the Master was to provide the said Apprentice *John Edwards* with Meat Drink Washing and Lodging during the said Term of three Years.

That

That the said Agreement OR Indenture so entered into was NOT STAMPED according to any Act of Parliament; nor signed by THE APPRENTICE *John Edwards*; nor was the said *John Edwards* a Party thereto: But it was signed executed and entered into, by the said *Edward Jones* the Father, for and on the Part and Behalf of the said *John Edwards* his said Son.

That the said *John Edwards* well and faithfully served his said Master *John Jones*, as an Apprentice, by and under the said Agreement OR Indenture as aforesaid, in the Parish of *Llanvair Dyffryn Clwyd* aforesaid, for and during all the said Term of three Years, according to the Purport true Intent and Meaning of the said Agreement OR Indenture.

That he the said *John Edwards* the Apprentice also resided inhabited and lodged with his said Master *John Jones* in the Parish of *Llanvair Dyffryn Clwyd* aforesaid during all the said Term of three Years.

That the Paupers or any of them have not gained any Settlement elsewhere, in their or any of their own Rights.

Whereupon the Sessions is of Opinion "That the last legal Settlement of the said several Paupers is in the Parish of *Llanvair Dyffryn Clwyd*."

Therefore they confirm the Order of the two Justices, with Costs.

On Monday 30th April last, a Motion was made by Mr. Guldry, to quash these Orders; and he obtained a Rule to shew Cause why they should not be quashed.

1st Objection. The Apprenticeship ought to be BY INDENTURE: Whereas this is only stated to be "by Agreement OR Indenture."

2d. The Indenture (if it was an Indenture) ought to be STAMPED: And not being stamped, it ought not to have been admitted in Evidence; being absolutely void to all Intents and Purposes whatsoever, and inadmissible in Evidence.

3d. The APPRENTICE never signed or executed, or was even Party to this Agreement or Indenture.

Mr. Lloyd now shewed Cause. To the 3d Objection, "of the Apprentice's not executing or even being Party"—he answered, "That it was not necessary: If it was, no Infant could ever be bound or learn a Trade."

But as to the 2d Exception—He argued that if the Case of **Cu- * P. 4 G. 2. B. R. v. Sir J. S. 903. and ante, pa. 92—96.* *erden and Leyland* was to be looked upon as conclusive, it would be

**Cu- * P. 4 G. 2. B. R. v. Sir J. S. 903. and ante, pa. 92—96.*

an Authority against him. But there was a Circumstance in that Case "that the Sixpenny Duty was not paid;" and therefore by 8 & 9 Ann. c. 9. the Indenture could not be given in Evidence at all:

* *V. ante*, pa. 96. Which is not the present Case: * But

96.

§ L. C. J. Lee was not present.

THE COURT said it was holden in that Case, upon the Words of the Acts, "that the Indenture not being stamped, was ABSOLUTELY VOID to all Intents and Purposes whatsoever."

And Mr. Justice DENISON mentioned a subsequent Case determined accordingly; viz. *Rex v. The Inhabitants of Holbeck, M.*

|| *V. ante*, N^o 16 G. 2. B. R. ||

69, pa. 198 to 201.

Per Cur.—

RULE made absolute for quashing both Orders.

Note—No Mention was now made, on either Side, of the first Exception taken on the original Motion; Nor did the Court say any Thing, as to the third.

Michaelmas Term

18 Geo. 2. 1744.

N^o 81.

Rex v. The Inhabitants of Fittleworth.

Wednesday
28th Nov.
1744.

TWO Justices made an Order for the Removal of *William Overington, Mary* his Wife, and their three Children, *William, Mary* and *Jane* (aged about 10, 8, and 5 Years respectively) from *Fittleworth* to *Pulborough*, (both in *Suffex*.) And, upon Appeal, the Sessions discharge that Order.

Special Case—The said *William Overington* came into *Fittleworth* with a *Certificate* from *Pulborough*, dated 31st July 1736, duly attested and allowed. He continued in *Fittleworth*, without gaining any Settlement there, till *Michaelmas* last: Soon after which Time, at a Court Leet of the Bishop of *Chichester* for the Manor of *Amberley*

berley in the said County, on the 24th of October last past, (within which said Manor the said Parish of *Fittleworth* lieth,) the said *William Overington* was duly elected and sworn *Tything-man* for the Tything of *Cold Waltham* in the said County; which said Tything doth NOT extend through ALL the said Parish of *Fittleworth*, but comprehends that Part of it wherein the said *William Overington* resided.

That the said *William Overington* continued in the Execution of the said Office in the said Parish of *Fittleworth*, UNTIL the 30th Day of March last. But the said *William Overington* on the 27th Day of the same Month of March did actually become chargeable, and asked and received Relief from the said Parish of *Fittleworth*. Whereupon, upon the Complaint of the said Parish of *Fittleworth*, the above-mentioned Order was made for removing the said *William Overington* and his said Family from *Fittleworth* to *Pulborough*.

The Sessions are of Opinion "that the said *William Overington*, " by the Means aforesaid, hath AVOIDED HIS CERTIFICATE and " gained a Settlement in *Fittleworth*." And thereupon they discharge the Order of the two Justices.

On Wednesday 30th of May last, a Motion was made by Sir *John Strange* and Mr. *Burrell*, to quash this Order of Sessions: And a Rule was made to shew Cause why it should not be quashed, and the original Order affirmed.

It was then urged, that though it had been settled in the Case of * *St. Mary Calendar* and *St. Maurice in Winchester*, P. 8 G. 2. B. R. * *V. ante*, N^o 10. and in the Case of || *Holy Trinity* and *Garlington*, Tr. 2 G. 2. B. R. || *V. ante*, P. 30. " That executing for one WHOLE Year an annual Office WITHIN " the Parish, being legally placed therein, is sufficient," (whereas formerly it was doubtful whether the Office must not be *parochial*;) yet it had never been carried so far as that executing it PART of the Time and in PART of the Parish, only, should be sufficient.

On Wednesday last (the 21st Instant) Cause was shewn by Mr. *Lloyd* and Mr. *Humphries*, against quashing this Order of Sessions.

They said that the Act of Parliament of 9 & 10 W. 3. c. 11. had not made it necessary, nor did the cited Cases prove it to be necessary, that the Office should be executed for a whole Year, or extend thro' the whole Parish.

They added, That the Justices had no Jurisdiction to remove him during his being in the Execution of his Office. So a Servant is irremovable during the Service; and an Apprentice, during the Contract.

The

The Counsel for the Motion said that the Question did not depend on 9 & 10 W. 3. singly; but that 3 & 4 W. & M. c. 11. sect. 6. ought also to be taken into Consideration; which specifies what Acts shall be equivalent to Notice; and one of them is executing an annual Office in the Parish *during one whole Year*: And the latter Act of 9 & 10 W. 3. is most clearly *relative* to the former, of 3 & 4 W. & M.

Lord Chief Justice LEE observed that three Objections had been made to the Order of the two Justices.—

1st. That their Order cannot be confirmed; because the Man was *not a Subject of their Jurisdiction*, being in the *Execution* of an Office to which the *Public* had a Right; and therefore the Justices could not interpose to remove him: And it was said that even *Servants* were irremovable *during* their Service.

But no Case has been cited to prove “that *Servants* are so:” And I should *very much* doubt it. But here the Act of Parliament is *express* “That the Jurisdiction shall not be exercised upon Certificate-
“men *before* they become actually chargeable; but *then* (though not
“before) the Justices are to have Jurisdiction to remove them:”
And there is *no Exception* of any Body whatsoever.

The 2d Objection—“That the Office does not extend throughout the
“*whole Parish*”—has no great Weight with me. For, the Act only says “it shall be an annual Office *in the Parish*.” And we are bound by the *express Words* of the Act.

The 3d Objection is “That the Office has not been executed
“*during the Space of a whole Year*.”

The Case of *Garlington* was not determined on *this Head*. Besides, the Person was there legally placed in the Office, and *did execute it for a whole Year*. The Act does not say “a whole Year
“*after Admission*.” The Swearing has Relation to the Placing in the Office.

The Act of 3 & 4 W. & M. c. 11. has Words which go *further* than this Act of 9 & 10 W. 3. c. 11. there, a *whole Year's* Execution is required by the *express Words*: Here, the Words are “*Execute an annual Office in the Parish*, being legally placed therein.” If this Act is not to be understood in the same Sense as the former, there will remain nothing more than the legal Placing: For, *ever so little Time's* Execution would suffice, on that Principle, to make an Execution of an annual Office.

He

He said, The Reason of these two Exceptions in 9 & 10 W. 3. which give a Settlement to Certificate-men, was for the Reward of their Service, and for the Person's being of such Estimation as to be judged unlikely to become chargeable.

Upon the whole, he thought it reasonable to give the *same* Construction to *this* Act of 9 & 10 W. 3. as to 3 & 4 W. & M. and make a *whole Year's* Execution of the annual Office *necessary* towards gaining the Certificate-man a Settlement: Especially as the contrary Construction would reduce it to the *single* Qualification only of a *legal Placing*; since *one Hour's* executing the Office would, upon *that* Construction serve for an Execution of it within the Act.

Therefore he was for considering it, at least.

Mr. Justice WRIGHT concurred.—The 9 & 10 W. 3. says
 "A Certificate-man shall gain no Settlement, unless by renting a
 "Tenement of 10 l. *per Annum*, or *executing some annual Office* in
 "the Parish being legally placed therein."

Now this must be *such* an annual Office as by the Laws *then in Being* would gain a Settlement: And the former Act, of 3 & 4 W. & M. had made the "Executing an annual Office for a *whole Year*" equal to Notice, and *so* to gain a Settlement. But this Man has *not* gained a Settlement: He has *not* executed it for a *whole Year*. If so, then the Objection to the *Jurisdiction* of the Justices *drops*: For, by 8 & 9 W. 3. c. 30. *such* a Person having asked Relief becomes *actually and instantly removable*. And his removing *himself*, or being thus *removed*, is tantamount.

Therefore there is no Inconvenience: For the Justices may appoint another Constable or Tythingman, as on a Removal out of the Parish.

And he held that it *need not* be an Office throughout the *whole* Parish: For, being an annual Office *within* the Parish is *sufficient*.

Mr. Justice DENISON held the Objection to the Jurisdiction to be of no Weight at all; because the Act of 8 & 9 W. 3. c. 30. is express "that he shall be removed *as soon* as he becomes *actually chargeable*;" and that Act has *no Exceptions*.

As to the Tything not being co-extensive with the Parish—The *express Words* of the Act are only "Some annual Office *in* the Parish:" And we are *not to vary* from it; but must be directed by its *express Words*.

As to the *Time* of executing the Office (which is the 3d and main Objection)—There has been *no Case on that Head*, that I know of. It was a Hardship on Parishes to be obliged to receive Certificate-

men: And therefore I take the Act of 9 & 10 W. 3. c. 11. to be *re-strictive*; and not to give any new Qualification. It could never be the Meaning of that Law to give a Certificate-man a greater Qualification than a Pauper at large was intitled to.

And why should the Legislature *confine* it to an annual Office, if they did not intend to require the Execution of it for a Year, as the Qualification for gaining a Settlement? The Construction now attempted, would introduce a Qualification to a Certificate-man, which a Pauper at large has not: Which could never be the Intention of the Act.

Lord Chief Justice LEE said he would think of it a little, on this Head of the Want of having executed it a whole Year. On the Rest, he said, he had no Doubt,

* Mr. Justice Chapple was absent.

Mr. Justice WRIGHT and Mr. Justice DENISON* were also clear "that the other two Objections were of no Weight."

CUR. ADVIS.

Lord Chief Justice LEE now delivered the Resolution of the Court.

We are of the same Opinion that we declared before; viz. "That here is not a Settlement gained by this Certificate-man, by the executing the Office of Tythingman, in the MANNER as is specially stated in the Order of Sessions; because the Execution of the Office, as there stated, is an Execution for the Space ONLY OF SIX MONTHS."

† 8 & 9 W. 3. c. 30.

My Opinion on the † Act is this—That the Meaning of the Words "Unless he shall execute some annual Office in such Parish, &c," is, That unless he does that Service which is a Performance of this Requisite, which the Act prescribes, for the Space of a WHOLE YEAR, he does not gain a Settlement. And here the Performance has been for LESS than half a Year: Therefore he has gained no Settlement by it.

And accordingly, the Rule must be (and it accordingly was) that

The Order of Sessions be QUASHED: And
The Order of two Justices AFFIRMED.

As to the 2d Exception—V. Post, N^o , Rex v. Inhabitants of Whitchurch, Easter Term 1754, 27 G. 2.

Rex

Rex v. The Inhabitants of Greenwich.

N^o 82.

TWO Justices made an Order for the Removal of *Hannah Wall*, Spinster, from *Longdon in Staffordshire* to *Greenwich in Kent*: And, upon Appeal, the Sessions confirmed that Order.

The same
Wednesday
28th Nov.
1744.

Special Case—*Hannah Wall*, the Pauper, is the Daughter of *George Wall* deceased; who, in his Life-time, declared to a Witness now examined, That he had hired himself for a Year and served a Year as a Livery-servant, at 7*l.* Wages, to one Captain *Saunderson*, Commander of the *William and Mary* Yacht, who had a House and Family at *Greenwich*, and resided there when not absent on the King's Service; and that his Master made frequent Voyages to and from *Holland*; and that he always attended him in the same; that he never was 40 Days TOGETHER at *Greenwich*, though during his Service he might be there 40 Days at DIFFERENT Times.

And thereupon the Sessions adjudged "that the said *George Wall* was settled in the said Parish of *Greenwich*:" Under whose Settlement the said *Hannah Wall* derived her's; not having gained any in her own Right.

On *Wednesday* the 14th of *November* last, Mr. *Legge* moved to quash these Orders; for that upon this Case, as stated, there is no Foundation to adjudge her Settlement to be at *Greenwich*. And a Rule was made to shew Cause why they should not be quashed.

The Counsel for the Order (Sir *John Strange*) who was now to have shewn Cause against quashing them, proposed to send the Sessions Order back to the Sessions, that they might state the Facts, instead of stating mere Evidence; which is all that they have at present done.

And Mr. *Lloyd*, who was on the other Side, observed that it was not even a State of Evidence, but only of what a Man once said; and that too was only "That he MIGHT be 40 Days there at different Times."

RULE ENLARGED.

On *Saturday* next after the *Octave* of *St. Hilary*, 18 G. 2. by Consent of Sir *John Strange*, and on the Motion of Mr. *Legge*, it was referred to the Justices to state the Facts more fully.

Ii 2

And

And afterwards, on *Wednesday** 3d July 1745, upon the Motion of Mr. *Jarvis* and Sir *John Strange*, it being then stated "That he "DID reside forty Days at *Greenwich*, at different Times;" and Mr. *Legge* (who first moved to quash them) being now satisfied—

Both Orders were AFFIRMED.

* The proper Place, therefore, of this Case should have been under *Trinity Term* 1745, 18 & 19 G. 2. but it makes very little Difference.

Hilary Term 18 Geo. 2. 1744.

NO Case of this Sort was *determined*: Three or four Rules to *shew Cause* were obtained; which will come in their proper Places.

Memorandum—In this Vacation, viz. on 17th March 1744, died Sir WILLIAM CHAPPLE, second Judge of this Court. He was succeeded by Mr. *Serjeant FOSTER*, Recorder of *Bristol*.—See the Note at the Bottom of Page 247.

Easter Term 18 Geo. 2. 1745.

No. 83.

Rex v. The Inhabitants of Melborne.

Thursday 9th
May 1745.

V. Sir John
Strange 1225.
S. C.

TWO Justices made an Order for the Removal of *Alice Mem-bury* and her nine Children (specifying their Names and Ages) from *Sheepshead* in *Leicestershire* to *Melborne* in *Derbyshire*: And the Sessions, upon Appeal, confirmed that Order.

Special Case—She was the Widow of *Thomas Membury* deceased: Which *Thomas Membury*, his Wife and Family were, by *Certificate* dated 30th Nov. 1733, duly certified and acknowledged to be Inhabitants legally settled in the Parish of *Sheepshead*.

The said *Thomas Membury* removed, with his Family, from *Sheepshead* to *Melborne*, by *Virtue of the said Certificate*; and continued to reside there to the Time of his Death, which happened in 1743.

The said *Thomas Membury*, during such his Residence at *Melborne*, officiated as SCHOOLMASTER there.

During his Continuance in the said School, *Lady Betty Hastings* did, by Deed indented and inrolled in the high Court of Chancery, bearing Date 14th December 1738, convey to the Hon. *John Dorney*, Esq; and other Trustees therein named, and to their Heirs, divers Lands and Tenements lying within the County of *York*, in Trust to permit *John Benson*, Clerk, Vicar of *Lodsham*, *Christopher Weatherhead*, Clerk, Vicar of *Thorpe-Arch*, and *Robert Potter*, Clerk, Vicar of *Collingham*, and the succeeding Vicars for the Time being of the said three Vicarages for ever, to receive and take the Rents and Profits of the said Premises for ever, and apply and employ the clear Monies raised thereby, for such Intents and Purposes and in such Manner as in and by the Schedules thereunto annexed are specified or directed: In which said Schedules are the following Words—"Also the yearly Sum of 10*l.* TO THE CHARITY-SCHOOL OF MELBORNE in the County of *Derby*, to be PAID to the VICAR there for the Time being." Which Sum of 10*l.* the said THOMAS MEMBURY received from the Vicar of *Melborne* aforesaid, from the Execution of the said Deed to the Time of his Death in 1743.

That the said Sum of 10*l.* was not appropriated to any other Use.

Therefore the Court of Sessions, apprehending "the said *Thomas Membury* hath gained a FREEHOLD ESTATE by receiving the said "10*l.* a Year under the said Deed," confirm the Order, and discharge the Inhabitants of *Sheepshead* from the said *Alice Membury* and her said nine Children.

On Monday 11th Feb. last, a Motion was made by Sir *John Strange* and Mr. *Lloyd*, to quash these Orders.

Their Objection was, That there are only two Methods whereby a *Certificate-man* can gain a Settlement; viz. renting a Tenement of 10*l.* per Annum Value; or executing some annual Office in the Parish, being legally placed therein: Whereas this is neither of these Cases; nor any Freehold, either in Law or Equity.

Upon

Upon shewing Cause, now, for the Parish of *Sheepshead*, it was urged by Mr. Gundry, Mr. Ford, and Mr. Wilmot, that there was not enough stated to shew that the two Justices had done wrong: And therefore the Court will suppose that they have done *right*; and the Order of the two Justices ought to stand confirmed.

However, if the Man was *Schoolmaster for Life*, and had a *Freehold* in it, that would gain him a Settlement: And the receiving this Annuity of 10*l.* a Year, gives him as much Consequence in the Parish as renting 10*l.* a Year.

Notwithstanding the Confinement of a Certificate-man's gaining a Settlement, to the two Cases of renting 10*l.* a Year, or executing an annual Office in the Parish; yet the Property of an Estate of his own, which renders him *irremovable from it*, has always been adjudged to gain a Settlement: And so, for the same Reason, will his being fixed in the Schoolmastership of an *endowed School*. This Payment of 10*l.* a Year to the Vicar was only *in Trust for the Schoolmaster*; and therefore 'tis the same Thing as if it had been made *immediately payable to him*. Surely, a Man who receives 10*l.* a Year is less likely to become chargeable, than a Man who pays 10*l.* a Year.

On the other Side, it was said that the Pauper remains fixed upon *Sheepshead*, by their Certificate, *unless* it appears that he has gained some other Settlement. Now here it only appears "that he officiated as Schoolmaster:" Nothing further appears.

Besides, The Legacy of 10*l.* is to the VICAR, not to the Schoolmaster; and for the Benefit of the School, not of the Master. This Man had no legal Demand for it: He only received it as an *occasional Charity*.

There is no Need to send this back, to be further stated; because, as there is not sufficient stated to shew that the Man did or could gain a Settlement, the Certificate must stand. The Sessions have plainly and manifestly determined *wrong*: For they give the Reason of their Adjudication; viz. their Apprehension "that the Man GAINED A FREEHOLD ESTATE by receiving 10*l.* a Year under the said Deed." And its being an annual Office was not before them.

* There were
three of them,
in all.

Lord Chief Justice LEE—We must now determine upon all the Orders: For we must take this special Case stated in the Order of Sessions to be the Case upon which the two Justices removed the Paupers.

By the Act of 9 & 10 W. 3. c. 11. two Cases are specified as gaining a Settlement to Certificate-persons; viz. renting a Tenement of

of the Value of 10*l.* *per Annum*; and executing an annual Office in the Parish, being legally placed therein.

Now a *Schoolmaster* is no *annual Office*; nor indeed does it appear that he officiated more than occasionally: It don't appear that he had any *Right* to it; or even that he was *placed* in it.

Then as a *Tenement* of 10*l.* a Year—This Annuity of 10*l.* *per Annum* does not appear to be *appropriated to the Schoolmaster*; nor does this Man appear to have any *Interest* in it, (though indeed he received it :) He could have no *Freehold* in it, beyond Doubt.

And the Sessions have determined it upon the Reason of his having gained a *Freehold by receiving it*: Which he certainly has not. Therefore their Order is a *bad one*.

Mr. Justice WRIGHT and Mr. Justice DENISON concurred in the same Opinion "That by *receiving* this Charity, he gained no *Freehold*:" And they added, That as this was given to the *Vicar*, or at least to *his Disposal*, they suspected Lady Betty Hastings considered the *Vicar* as the Person who was *himself* most likely to teach the School.

*Per Cur.** unanimously—

*Rule made absolute for QUASHING
the ORDERS,*

* Mr. Justice FOSTER was absent. He took his Place on the Bench, as puisné Judge of this Court, upon the first Day of this Easter Term 18 Geo. 2. (viz. 1st May 1745.)

Trinity

Trinity Term

19 Geo. 2. 1745.

Nº 84.

Rex v. The Inhabitants of St. Petrox, within the Burrough of Clifton-Dartmouth-Hardness.

Friday 21st
June 1745.

TWO Justices made an Order for the Removal of *Ann Giles* from *St. Petrox* to *Stoke Fleming* (both in *Devonshire* :) And, upon Appeal, the Sessions discharged that Order.

Special Case—*ANN Giles* was, by Indenture dated 5th Sept. 1733, by the then Churchwardens and Overseers of *St. Saviours* within the Burrough of *Clifton-Dartmouth-Hardness*, with the Consent of two Justices of Peace for the said Burrough of *C. D. H.* by 43 *Eliz.* bound Apprentice to *Rebeccah Gregory* of the said Burrough Widow, with her to serve dwell and abide from the Date thereof UNTIL she should have accomplished her full AGE OF TWENTY-ONE Years. She served the said *Rebeccah* from that Time, in *St. Petrox* aforesaid, until 17th July 1738: When the said *Rebeccah Gregory*, by Indorsement on such Indenture, dated that Day, delivered up the said Indenture, together with all her Right Interest and Term of Years then to come and unexpired, as expressed in such Indenture, of the said Apprentice, to *Philip Foale jun.* of *Stoke Fleming*. And the said *Ann Giles*, then of the Age of 14 Years or thereabout, by Indenture dated the same 17th July 1738, did voluntarily bind herself Apprentice to the said *Philip Foale* (who is still living) to learn HOUSEWIFERY BUSINESS and such other Business as he should have to do, and serve him after the Manner of an Apprentice from the Date thereof until the first Day of November 1744. And the said *Ann Giles* served the said *Philip Foale*, by the Means aforesaid, as an Apprentice, in *Stoke Fleming* aforesaid, for several Years, and until about the first of January last; when she intruded into the Parish of *St. Petrox*. And afterwards, to wit, on 9th of the same Month of January last, the said Indenture of the 5th September 1733 was, AT the General Quarter-Sessions of the Peace held in and for the said Burrough

Burrough of C. D. H. and Parish of Townstall, BY ORDER OF THE SAID COURT, *vacated and made void**. And the said Ann Giles, being then chargeable to the said Parish of St. Petrox, was then after removed, by Virtue of the said Order, to Stoke Fleming aforesaid. The Sessions, being of Opinion "that the said Ann Giles did NOT gain any Settlement by such Living under such Indenture in Stoke Fleming aforesaid," doth vacate and make void the said Order; and the same is, by their Order, made null and void.

* N. B. The Fault of it was the Binding this Parish-Girl till 21 absolutely, without the Alternative of Time of Marriage. V. 43 Eliz. c. 2.

On Thursday 31st January last, a Motion was made by Mr. Stra-
cey, to quash this Order of Sessions, and affirm the original Order.

The Objection to the Order of Sessions was, "That the first Indenture was only VOIDABLE; "not VOID." To prove this, the Case of St. Peter's and St. Nicholas's in Ipswich in Lord Hardwick's Time, M. 10 G. 2. B. R. was cited;† where the Indenture was only for four Years, and yet the Service under it was holden good; because the Indenture was not absolutely void, but only VOIDABLE at the Election of the Parties. This is a Case in Point.

† See it ante, p. 91. N^o 28.

RULE to shew CAUSE.

Mr. Gundry shewed Cause; and argued that this Ann Giles's Settlement was in St. Petrox.

The Question will not turn upon the first Indenture's being only voidable, but not void; because, though that should be granted, yet the Settlement was in St. Petrox.

For, first, here was no regular Assignment of this first Indenture to Philip Foale; it being only delivered up, but not assigned. And the Term was not expired, when she bound herself to Philip Foale. Besides, a Contract to learn Housewifery of a Man is a Contract that an Infant can not make; it being not for her Benefit. However, if she was legally bound to Philip Foale, he is obliged to maintain her.

All the Service in Stoke Fleming is under the second Indenture, which was void; because the first was subsisting when the second was made. And the vacating of the first Indenture is not warranted by any Law: For the only Power that the Justices have to discharge Apprentices is under 5 Eliz. c. 4. sect. 35. and that must be done by four Justices, and for Causes therein mentioned. Besides, the Quarter-Sessions of the County have here no Power to discharge; because, this being in a Burrough, it must by the express Words of the Act be done by the head Officer and three of his Brethren, &c. And

vide the 20th Geo. 2. C. 3

Lord Chief Justice LEE observed that the Discharge must be under the Hand and Seal of the four Justices. *V.* the same 35th Section.

On the contrary it was urged by Mr. Stracey, That a PAROL-Affignment is sufficient. It is, at least, an *Affent*: And if the Service to Philip Foale was only by the *Affent* of the first Master, the Settlement will be in Stoke Fleming, where the Service was done.

Whether Foale was obliged to maintain her, or not; that was a Matter to be disputed between him and the Parish of Stoke Fleming: But St. Petrox had certainly a Right to remove her thither.

THE COURT thought no Stress was to be laid on the *vacating the first Indenture by the Sessions*; because it does not appear whether the Circumstances which 5 Eliz. c. 4. *sect.* 35. requires were observed or not. And they thought it not void, for Want of the Alternative of Marriage; though perhaps not obligatory upon the Parties. And though an Assignment of an Apprentice (except in London, by Custom) cannot, strictly, be made; yet as this Assignment was with the *Affent* of the Mistress, the Service under it will be good for the Purpose of gaining a Settlement: For the *Servitude CONTINUED under the FIRST Binding*. And though in the Ipswich Case the Indenture was holden "not to be binding as between the Parties;" yet it was holden to be neither void nor voidable by the Parish as to the gaining a Settlement. But even if there was no Authority in the Case, yet the Indenture ought not to be considered as absolutely void, but only voidable: For it would be extremely hard that a poor Child, who had served ten Years under an Indenture of Apprenticeship, should lose the Benefit of her Settlement, because the Justice's Clerk who made the Indenture happened to be either ignorant or negligent.

Per Cur. unanimously—

RULE made ABSOLUTE, to QUASH the ORDER of SESSIONS, and AFFIRM the ORDER of the TWO JUSTICES.

Rex

Rex v. The Inhabitants of Goodnestone next Wingham. N^o 85.

TWO Justices made an Order for the Removal of *William Mark-* Monday 1st
ham the Elder and *Catharine* his Wife, and their six young July 1745.
 Children, to wit *Hannab*, *Anne*, *Catharine*, *William*, and *Thomas*, V. Sir John
 aged about seven, six, five, four, one and a half Years respectively Strange 1232.
 and one other Daughter aged about five Weeks, not then baptized, S. C. (there
 from *St. Peter's the Apostle* in *Sandwich* to *Goodnestone* next *Wingham* called *Goolaf-*
 (both in *Kent* :) And, upon Appeal, the Sessions confirmed that *ton*, instead of
 Order. *Goodnestone*.)

Special Case—*William Markham*, being settled in *Goodnestone*, unmarried, and without Child or Children, was hired by *John Wyborne* of *Northbourne* to serve him from *Michaelmas* 1731 for a Year, at 8*l.* a Year; and lived with and served his said Master in *Northbourne* till within *three Weeks* of *Michaelmas-day* following; when he asked his Master to give him *Leave to go to the Herring Fishery*; and his Master consented that he should go, if he could get a Man to do his Work to his (the Master's) Liking. *William Markham* accordingly procured one German to do his Work, and agreed to give him 5*s.* a Week for the same, and paid him the said Sum; and brought the said German to his said Master, and his Master approved of him; and German did *Wyborne's* Work in the said Parish of *Northbourne* to the End of the Year. *Markham* went to Sea, and returned at the End of the *Herring Fishery*; which was about three Weeks after *Michaelmas*: And what he earned at the said Fishery was for his own Benefit. When he went to Sea, his Master paid him, on his Request, 3*l.* Part of his Wages; but paid him no more at that Time, because the said *Markham* said he had then no Occasion for more Money: And when he returned, his said Master paid him 5*l.* the Residue of the Wages left in his Hands. And then *Markham* made a new Agreement to serve the said *Wyborne*; and served him about three Quarters of a Year more, under the second Contract.

And they state that *William Markham* gained no other Settlement in *Northbourne*, save as aforesaid; nor hath since gained any Settlement in any other Parish.

On the 9th of *February* last, a Motion was made to quash these Orders: For that the Settlement of *William Markham* appeared to be in *Northbourne*; since this Service for three Weeks was equivalent to a personal Service, upon the Maxim "*Qui facit per alium facit*"

"*per se.*" To prove which, the following Cases were cited—
Littleton, sect. 157. 11 H. 4. 72. b. 24 Edw. 3. 32. a. Co.
Lit. 107.

It came on again, on *Wednesday 22d May 1745*; but was then adjourned.

It now came on again, and was argued by Mr. *Thomas Robinson* and Mr. *Knowler*.

Mr. *Robinson*, who was for the Motion to quash the Orders, stated the before-mentioned Cases, and added two more, *viz. P. 7 G. 1. Rex v. Inhabitants of Islip*, and *P. 17 G. 2. Rex v. Inhabitants of Beccles.* [*V. ante, N^o 78.*]

* *V. 8 & 9*
W. 3. c. 30.
sect. 4.

Mr. *Knowler*, who shewed Cause against quashing these Orders, said, The Question turned upon the *Service* NOT * CONTINUING TO THE END of the Year: The Master and Servant parted by Consent; and by this, the Contract was DISSOLVED.

In the *Islip* Case, the Servant only went to a Statute Fair; and the Contract was not dissolved. [*V. ante, pa. 71. and Sir J. S. 423.*]

† *V. ante, pa.*
230.

In the Case of *Rex v. The Inhabitants of Beccles, P. 1744. 17 G. 2. B. R.* the † Servant worked with another by the Consent of his Master: But here was a PARTING by Consent; and it was known "that the Fishery would last till after Michaelmas."

‡ *Ante, N^o*
78.

Lord Chief Justice LEE—Here is a *Hiring* for a Year stated: The Question is, Whether there is a *SERVICE for a Year*, too.

Now I cannot distinguish *this* Case from that of *Beccles* ‖. In which Case, the Absence *with the Master's Consent* were holden not to vitiate or dissolve the Contract. So in the Case of *Islip*—It's plain the Court did not hold it to a *scrupulous Exactness*, when there was a *Hiring* for a Year; though there were, in that Case, *many Instances of Absence*—Two were *Sickness*: And the last was, by a liberal Construction, looked upon as a just Cause of going away; and therefore not a Dissolution of the Contract.

In the present Case, no *Dissolution* of the Contract is stated: And the Master paid him his Wages for the whole Year. Here was *Leave* given by the Master, three Weeks before *Michaelmas*, to be absent during the *Herring Fishery*: And in the mean Time, he provided one to do his Business, and received his whole Year's Wages.

I am of Opinion that both Orders must be quashed.

THE THREE OTHER JUDGES concurred in the same Opinion, for the same Reasons. And Mr. Justice *Wright* and Mr. Justice *Denison* thought this even a stronger Case than that of *Beccles*.

Mr.

Mr. Justice FOSTER added, That as the Master had the Benefit of the Contract during the whole Year, so ought the Servant to have it also.

Per Cur. unanimously—

RULE made ABSOLUTE to quash both ORDERS.

See the Cases referred to, at the End of N^o 78, in Page 232.

Rex v. The Inhabitants of Headcorn.

N^o 86.

TWO Justices made an Order for the Removal of Richard Burden and Mary his Wife and their four Children, viz. John, Elizabeth, Hannah and Mary, from Headcorn to Maidstone (both in Kent.) Upon Appeal, the Sessions confirm the Order as to Richard Burden; but quash so much of it as relates to the Settlement of the Wife and Children.

Wednesday 3^d
July 1745.

See Sir John
Strange 1233.
S. C. (though
he calls the
Parish "Hed-
come;") and
Sessions Cases,
Ed. 1750,
Vol. 2. pa.
391, N^o 206,
S. C.

The short Substance of the special Case was—That the Parish of Maidstone had, on 20th January 1730, given a regular and proper CERTIFICATE, which had been properly delivered to Headcorn, acknowledging "the said Richard Burden AND MARY HIS WIFE* to be Inhabitants legally settled in their Town:" But that, in Fact, Richard Burden was, fifteen Years before his Intermarriage with her, (which was on 7th October 1730,) lawfully married to one Mary Lee, who was living and appeared in Court at the Sessions; though he afterwards married Mary Broomball (the Person now removed as his Wife.) But that the Churchwardens and Overseers of Maidstone, at the Time of granting the Certificate, BELIEVED the said Mary Broomball to be his lawful Wife; not knowing, or having ever heard, "that he had any OTHER Wife." It was further stated, That the lawful Wife, Mary Lee and three Children by her were, after the said Certificate was given, removed to Maidstone, and maintained there.

* N. B. Her
Maiden-name
was Broom-
ball.

On Wednesday 19th June last, a Motion was made, by Mr. Gundry, to quash so much of this Order of Sessions as related to Mary the Wife and the four Children; and to affirm the original Order. They said the Parish of Maidstone were concluded and estopped, by their own Certificate, from saying "that Mary Broomball was not this Man's Wife."

A RULE was made to shew Cause; upon the Authority of Rex v. The Inhabitants of New Windsor, T. 5 G. 1. B. R.†.

† V. Sir J. S.
186.

Honiton

* V. 2 Salk.
535.

Honiton and St. Mary Axe, M. 9 Ann. B. R..* "that the Certificate
" is conclusive upon the Parish giving it."

Upon shewing Cause, Yesterday, the Counsel for *Maidstone* (Sir *John Strange*, Mr. *Thomas Robinson*, and Mr. *Otway*) denied that the Parish of *Maidstone* were estopped; and cited some Cases upon the Doctrine of *Estoppels*, which they said were odious in Law: (*Co. Litt. 45b. 47b. 19 H. 6. 44. 1 Ro. Ab. 862, 863.*) And the Consequence of such an Estoppel would be, that the Parish of *Maidstone* would have two of this Man's Wives to maintain at the same Time: Which would be contrary to Law and absurd.

They argued that the Parish of *Maidstone* was not concluded by their Certificate, any further than from denying "that he had a lawful Wife named *MARY*." They did not controvert that *Mary Lee*, his lawful Wife, and his three Children by her, were settled in *Maidstone*; because the Man was confessedly settled there: But they said it would be hard that they should be charged with his *Courtesan* and the Children by her too.

The Certificate only acknowledges "that this Man and *Mary* his Wife are Parishioners of *Maidstone*." But what Reason is there to construe the Certificate to mean another Woman, who was not his lawful Wife; when, in legal Construction, the Certificate imports to be applicable to *Mary* his LAWFUL Wife? The Justices have determined *MARY LEE* to be the lawful Wife: And she must, consequently, be the Person meant by the Certificate; and every Body is estopped to say the Contrary.

ADJOURNED.

And now the Counsel for *Headcorn* (Mr. *Gundry* and Mr. *Filmer*) proceeded, in Support of the Motion.

As to the Doctrine of *Estoppels*—If any Body is estopped, it is the Parish of *Maidstone*. If there is an Estoppel upon an Estoppel, it sets all at large. And if so, it must be taken upon the State of the Fact: And that is, "That *Maidstone* did not know or had ever heard that the Man had any other Wife but *Mary Broomhall*." Therefore they are concluded by their own Acknowledgment, from denying *Mary Broomhall* to be his Wife. And it is conclusive against them, not only as to *Headcorn*, but as to all other Parishes whatsoever. *Headcorn* received them on the Faith of a Certificate of *Facts* which it was incumbent on the Parish of *Maidstone* to have inquired into. They have acknowledged the Man himself and also this *Mary* (*Mary Broomhall*) to be their Parishioners.

† V. 2 Salk.
535. accord.

Lord Chief Justice LEE—It appears sufficiently certain that *Mary BROOMHALL* was the Woman certificated under the Description “of *Mary his Wife*.” And she was received under this Certificate; and cohabited, and had Children, under it, at *Headcorn*.

Maidstone’s having received and provided for the true and lawful Wife can make no Difference: They were bound to that, by the Husband’s being their Parishioner. But it must depend on the CERTIFICATE only, “whether *Maidstone* is bound to provide for the “other Woman and the Children by her.”

Neither does the Question turn upon the Doctrine of *Estoppels*, considered at large and at *Common Law*; but on the Certificate given under the *Act of Parliament*.

This Certificate is a most solemn Acknowledgment by the Parish who gave it, “that the Parties who are the Subject of it are their legally-*settled* Inhabitants:” ’Tis a Sort of an *Adjudication* “that they “are so.” And so it was holden in the Case of **Honiton* and *St.* * 2 *Salk.* 535. *Mary Axe*. And when the Persons certificated, or their Children, become actually chargeable, the Parish who gave the Certificate are bound to receive them. In that Case of *Honiton*, Judge *Powell* compared the Certificate to an Acknowledgment upon Record.

Now the Parish of *Maidstone* have by this Certificate expressly acknowledged *Mary Broomhall* to be their legal Inhabitant; and the Parish of *Headcorn* were thereupon bound to receive her. Therefore when she becomes chargeable, the Parish of *Maidstone* are bound to provide for her and her Children by Burden. And so was the Determination in the Case of *New Windsor* and *White Waltham*.

THE WHOLE COURT agreed in Opinion with the Lord Chief Justice. They said there was no Difference between this Case and that of *New Windsor*; except one that is not material, viz. that there, the Man and Woman never were married at all; but here, they were actually married, but not legally. In that Case it was holden that *White Waltham* was not at Liberty, contrary to their own Certificate, to controvert the certificated Persons (*Pizzey* and *Anne*) being Man and Wife.

Now here the Certificate is in the same Manner as that was.

In the Case of †*Nympsfield* and *Woodchester*, M. 16 G. 2. B. R. *Nympsfield* having received a Man and Woman as Man and Wife, † *V. ante*, No. without appealing, it was holden “that they were not at Liberty afterwards to controvert the Marriage of the Father and Mother, in “a Question about the Settlement of the Children.” Indeed, the Certificate was not there attempted to be controverted as to the Man and

and Woman; but only as to the Children: But the Settlement of the Children being derivative, was holden to be in the Parish which gave the Certificate to the Father and Mother, *vs* Man and Wife.

In the present Case, *Maidstone* say they were deceived: But it was their own Fault or Folly, if they were so; and *they* deceived *Headcorn*: Therefore *they* ought to suffer; and not *Headcorn*.

Wherefore, *per Cur.*—

RULE made ABSOLUTE, to *quash* so much of the Order of Sessions, (which quashes the original Order of the two Justices) as relates to the said *Mary* the Wife and four Children; and to *affirm* the remaining Part of the Order of Sessions; and to AFFIRM the original Order of the two Justices.

Michaelmas Term

19 Geo. 2. 1745.

Nº 87.

Rex v. The Inhabitants of Croscombe.

Thursday 7th
Nov. 1745.

V. Sir John
Strange 1240.
S. C.

TWO Justices made an Order for the Removal of *Joseph Garnsey* and *Mary* his Wife and their six Children, *viz.* *James*, *John*, *Joseph*, *George*, *Robert* and *Sarah*, aged about twelve, ten, eight, six, four Years, and six Months, respectively, from *Croscombe* to *St. Cuthbert's* the In-parish, *Wells*, (both in *Somersetshire*;) And, upon Appeal, the Sessions quashed the Order of the two Justices.

Special Case—*Joseph Garnsey* the Pauper was born in *Croscombe*, and lived there with his Parents till about fifteen; then hired himself (being single) to live with *Dr. Lucy*, as his Servant, for a Year, for 4*l.* and a Livery; and accordingly lived with his Master, in

in the *Liberty of St. Andrew*, during that Year, and had his Wages and Livery; and, without coming to any new Agreement at all, continued with his Master, in the *Liberty*, about a Quarter of a Year longer. Then the Master took a House, above ten Pounds a Year, in the Parish of *St. Cuthbert the In-parish Wells*; and with his Family (*Joseph Garnsey* the Pauper being one) removed out of the said *Liberty* into that House in the Parish of *St. Cuthbert the In-parish Wells* aforesaid; where the said *Joseph Garnsey* the Pauper, the Father, CONTINUED TO LIVE WITH HIM about six Months, STILL UNDER THE FIRST CONTRACT, and was paid the same Wages, in Proportion to the Time. The Sessions, being of Opinion "that the Place of the last legal Settlement of the said *Joseph Garnsey* and his Wife and their six Children is in the *Liberty of St. Andrew* aforesaid, by Virtue of such Living and Serving with the said *Dr. Lucy* there, for one Year as aforesaid," doth Order that the said recited Order be vacated set aside and discharged.

On Monday 4th June 1744, (in Trinity Term 17 & 18 G. 2.) a Motion was made by Mr. Gundry, to quash this Order of Sessions; for that they were mistaken in Point of Law; the Service in *St. Cuthbert's* being a Continuance of the first Contract, and under it, and for six Months: The Servant's last legal Settlement must therefore be in *St. Cuthbert's*, where he served the last six Months. He cited several Cases: *Rex v. Inhabitants of Aynhoe*, M. 1 G. 2. *Brightwell v. West Hanning*, H. 1 G. 1. *Silverton and Ashton*, Tr. 12 Ann. (*V. Foley's Poor Laws*, pa. 210.) *Ivinghoe and Salebury*, P. 4 G. 1. *Rex v. Inhabitants of Eadoch*, P. 15 G. 2. (ante, N^o 64.) *West Stowen and Fifehead*, H. 11 G. 2. (meaning *Rex v. Inhabitants of Fifehead Magdalen*, ante, N^o 37, printed, erroneously, 73. v. pa. 116.)

RULE to shew Cause why the Order of Sessions should not be quashed, and the original Order affirmed.

Cause was now shewn: And it was urged, that this was *not* the same Service as the first Year's was: For that the first Contract was completed and executed on both Sides, and was determined. It had gained the Servant a Settlement in *St. Andrew's*. And there was no new Contract or Agreement at all: Nor is any Thing stated that can destroy the Settlement gained in *St. Andrew's* by serving a whole Year there.

Mr. Gundry replieth, That it is the constant Practice, for Servants to go on upon the first Agreement, without any new one: And that

upon the Principles laid down by his Opponents, a Servant who had lived with his Master twenty Years in different Parishes, without any new Contract, must be settled in the Parish where his Master had lived in the *first* Year of his Service.

After it had been thus argued by Mr. Gundry for the Order of the two Justices, and Mr. Henley and Mr. Gould for the Order of Sessions—

THE WHOLE COURT were unanimous, That as there was a *Hiring for a Year*, and a *Service for a Year*, and a CONTINUANCE under the SAME Service, it was sufficient to gain a Settlement; and that such Settlement must be in the Parish where it was performed for the last forty Days.

LEE Lord Ch. Just. observed that the Statute of 13 C. 2. c. 12. sect. 1. authorizes the Justices (upon Complaint made by the Churchwardens or Overseers within forty Days) to remove to that Parish which was the Pauper's last Place of Settlement for forty Days; either as a Native, Householder, Sojourner, Apprentice, or Servant: (For, then, Service for forty Days gained a Servant a Settlement.)

Then the 3 & 4 W. & M. c. 11. sect. 7. enacted "that if any unmarried Person, not having Child or Children, shall be lawfully bired into any Parish or Town for one Year, &c, such Service should gain a Settlement." But this Statute was doubtful upon the Service; it being, that such Service should gain a Settlement, though no Notice in Writing should be delivered and published, as that Act required."

The 8 & 9 W. 3. c. 30. sect. 4. explains therefore the former Act of 3 & 4 W. & M. by requiring that it shall be not only a Hiring for a Year, but also a Service for a Year, and a Continuance in the same Service during the Year.—"That no such Person so hired as afore said shall be adjudged or deemed to have a good Settlement in any such Parish or Township, unless such Person shall continue and abide in the same Service during the Space of one whole

* See Folcy's "Year*."

Poor Laws,

pa. 212, 213,

214. where

this Act of

Parliament

and the Histo-

ry of it are

well explained

by L. C. Just.

Parker, in the

Sturton and

Aston Case.

The two Considerations of a Settlement gained in this Way, are — The Benefit to the Parish, and the Labour of the Person.

Mr. Henley says that he had completely gained a Settlement in St. Andrew's; and "that it shall not be destroyed by what followed."

But I say, He has destroyed that Settlement and gained a new one, by what he has done since: for it is certainly the same Service; and the last forty Days of it make the Settlement. And by gaining a latter Settlement, he of Course loses his former one.

His

His Lordship said he could not distinguish it from the Cases cited, * of a Hiring for a Year and a Service for a Year; which is holden to gain a Settlement, though the Service be *not under the same Hiring*: And he thought it quite indifferent in *what* PARISH the Service was; since it was the *same* SERVICE.

* *V. Silverton and Ashton, Tr. 12 Ann. B. R. (V. Sof. Cases Ed. 1750, Vol. 1. N° 46, pa 44. and Fortescue 308. and Fol. 210) Rex v. Inhabitants of Ladoek, P. 15 G. 2. B. R. (ante, N° 64. pa. 179)*

THE THREE OTHER JUDGES concurred, upon the same Principles.

THE COURT, therefore, being unanimous, the Rule was —that the

Order of the two Justices be AFFIRMED;
And Order of Sessions QUASHED.

V. Post, N° 98, Rex v. Inhabitants of Wrinton alias Wrington, Mich. 1748, 22 G. 2. and N° , Rex v. Inhabitants of Cavershall, Easter Term 1758, 31 G. 2.

Hilary Term

19 Geo. 2. 1745.

Rex v. The Inhabitants of Bray.

N° 88.

TWO Justices made an Order for the Removal of *James Gould* and *Elizabeth* his Wife from *Bray* to *Shottesbrooke* (both in *Berkshire*;) And, upon Appeal, the Sessions discharged that Order.

Monday 27th Jan. 1745.

The Pauper was born in *Bray*; and, being twenty Years of Age, was HIRED AND SERVED *there for a Year*: But he was the Son of a CERTIFICATE-man, who came into *Bray* with a Certificate from *Shottesbrooke*; and he had gained *no other* Settlement.

On *Tuesday* 26th Nov. last, a Motion was made by *Mr. Ford*, to quash this Order of Sessions; upon the Authority of the Case be-

L 1 2

tween

7. ante, N° 65, pa. 182. Rex v. Inhabitants of Sherborne. *tween the Inhabitants of Sherborne* and Thornsford, P. 15 G. 2. B. R. where it was determined "that the Children of Certificate- persons, born in the Parish, could not gain a Settlement in it, but " by one of the two Methods prescribed by 9 & 10 W. 3. c. 11."*

RULE to shew Cause.

Sir John Strange, who now shewed Cause against quashing the Order of Sessions, did not deny that this Question depended on 9 & 10 W. 3. c. 11. But besides the Qualifications particularly specified in that Act, the Court has extended them by *Construction*, and has let in Purchasers, though they were Certificate-men.

This Son was not in Being, when the Father came from *Shottesbrooke* to *Bray*; but was born afterwards: Therefore he is not strictly within the Words of the Act, "*Coming into a Parish by Certificate*:" And being twenty Years of Age, he must not be considered as Part of his Father's Family and dependent upon *his* Settlement.

An Apprentice of a Certificate-man shall not, *as being so*, gain a Settlement: But if *assigned over*, he may acquire one.

The Counsel on the other Side (Mr. Ford and Mr. Hayes) relied on the Case of *Sherborne* and *Thornsford*, where it was holden "that the Son was restrained to the *same* Methods of gaining a Settlement as the Father; and could not gain a Settlement under a *Hiring and Service for a Year*;" as a Case directly and absolutely in Point to the present Case.

Mr. Just. WRIGHT and Mr. Just. DENISON said, That Case was exactly in Point. There the Son was sixteen Years old, and was born in *Sherborne*, the Parish to which his Father was certificated; and was hired and served for a Year to *Francis Pope*, in *Sherborne*: And the Court were clear, that though the Pauper was born in the Parish, *after* his Father's coming thither by Certificate, yet he did not gain a Settlement by *Service*.

Mr. Justice FOSTER concurred, and said it was so settled upon good Reason; because, as the Son came under the Advantage of the Certificate, and was not removable till actually chargeable, he OUGHT to be BOUND by the Terms of it.

Per Cur. (*viz.* these three Judges, the Chief Justice being absent) unanimously and clearly—

Order of Sessions QUASHED:

Order of Two Justices AFFIRMED.

Easter

Easter Term

19 Geo. 2. 1746.

Rex v. The Inhabitants of Osgathorpe.

No. 89.

TWQ Justices made an *Order for the Removal of Thomas Ward and Jane his Wife and their six Children, John, Sarah, Jane, Dorothy, Catharine and Thomas, from Diseworth to Osgathorpe (both in Leicestershire:) And, upon Appeal, the Sessions confirmed that Order.

It appeared upon the Face of this Order of Sessions, and was expressly so stated, That the Pauper Thomas Ward was a CERTIFICATE-man from Osgathorpe to Diseworth; and it is therein stated that there had been a † FORMER Order of Removal from DISEWORTH to OSGATHORPE, BEFORE the Paupers became ACTUALLY chargeable, which Order had been appealed from, and had been || discharged generally by an Order of Sessions made upon such Appeal, and the Parish of Osgathorpe thereby discharged from the Paupers. And it states "that the Certificate was NOT produced at the Time of such Appeal." It further states, that at the Time of making the second Order of Removal, the Paupers were become ACTUALLY chargeable to the Parish of Diseworth.

Upon the last Day of the last Term, a Motion was made by Mr. Proctor, to quash these two last Orders, and also the first original Order removing the Paupers from Diseworth to Osgathorpe; and to affirm the first Order of Sessions, which quashed the first original Order.

The Principle upon which he grounded his Motion, was "That the first Order of Session which discharged the first original Order, was FINAL between these two Parishes, and CONCLUDED the Parish of Diseworth from removing them again to Osgathorpe by a second Order."

[V. Salkeld 492. inter Swanscomb and Shenfield Parishes, and Salk. 524. inter Harrow and Ryslip; and ante, pa. 74.]

Tuesday 22d
April 1746.
V. Sir John
Strange 1256.
S. C.

* Note — This original Order was dated 23d Jan. 1744: (which was in 18 G. 2.)

† N. B. This former Order bore Date on 2d December 14 G. 2.

|| The Order of Sessions for discharging it, was made in 14 G. 2.

RULE

RULE to shew Cause why the original Order made 23 Jan 1744, for removing *Thomas Ward &c*, from *Diseworth* to *Osgathorpe*, and also the Order of Sessions confirming it should not be quashed; and also why the Order of Sessions made 14 G. 2. for quashing the original Order made on 2d December then preceding, for removing all the above-mentioned Persons except *Thomas the Child* (who was then dead) from *Diseworth* to *Osgathorpe*, should not be affirmed; and the last-mentioned Order [meaning the original Order of 2d December] quashed.

The Question was "Whether this first Order of Sessions, being " *between the SAME Parishes*, was CONCLUSIVE upon the Parish of " *Diseworth* or not."

The Counsel for *Diseworth*, (Mr. Gundry, Mr. Ford, and Mr. Wilmot) who now shewed Cause, insisted "that it was NOT;" since the *Circumstances* were *not the same*. They agreed, that it would have been conclusive, had the *Circumstances* remained the same. But here, the *Circumstances* were quite altered: For the former Removal was *not as Certificate-persons*, they not being *actually* chargeable; but the second Removal was *as Certificate-persons actually become* chargeable. So that this is a *future Right* of Removal *subsequently* accrued to *Diseworth*, and which has *arisen* to them since the former Removal, and *did not exist at that Time*. The Justices had no Jurisdiction to remove *Certificate-persons*, *before* they became chargeable: Their Act was null and void. But as soon as they become *actually* chargeable, they were removable.

On the other Side it was urged, That *Diseworth* was concluded by this general Order of Discharge of *Osgathorpe*, made between the *same two Parishes*: Which general Order of Discharge must be taken to have been a Discharge *upon the MERITS*.

If *Osgathorpe* had not appealed from the first Order, there is no Doubt but that *they* would have been concluded. They did Appeal: And the Order was discharged. The Court cannot enter into any Facts contrary to the Adjudication of the Sessions.

Lord Chief Justice LEE—Certainly, an Order of Sessions *discharging* an Order of two Justices is *final* between the *same two Parishes*; and an Order of Sessions *confirming* an Order of two Justices is *final to all the World*; where the *Circumstances* REMAIN the SAME. But this Rule does not hold, where they are *not the same*.

We must give our Judgments upon the Facts stated in the present special Order of Sessions. Now this last Order of Sessions states " that

“ that he did come by Certificate from *Osgathorpe* to *Difeworth*, and
“ that they *are now become actually* chargeable.

If therefore the State of the Case *now returned* was *not* the former Case, then the first Sessions have not determined any Thing about the *present* Case.

It appears to me plainly, that the *first* Order was a Removal of these Paupers as *likely* to become chargeable; the *latter*, as Persons *under a Certificate*, ACTUALLY become chargeable.

Indeed, we are not at Liberty to *presume* Rights accruing subsequently, *unless* they do appear: But here it *does appear* the Right *did* plainly accrue subsequently, by their *actually* becoming chargeable.

THE OTHER THREE JUDGES concurred, for the same Reasons. They held the two Sessions-Orders to be very consistent each with the other. The former Sessions might *discharge* the former original Order, because the Paupers were *not* actually chargeable: And the latter Sessions might *confirm* the latter original Order, because they *were become* actually chargeable.

Per Cur. unanimously—

The RULE obtained by Mr. Proctor was DIS-
CHARGED: And

The original Order of the Two Justices bearing Date the 23d January 1744, and the Order of Sessions made in Confirmation of it, AFFIRMED.

Trinity

Trinity Term

19 & 20 Geo. 2. 1746.

N^o 90.

Rex v. The Inhabitants of Wyke.

Tuesday 17th
June 1746.

V. Sessions Ca.
Ed. 1750,
Vol. 2. pa.
389. N^o 205,
S. C.

TWO Justices made an Order for the Removal of *John Catton* otherwise *Speight*, and *Alice* his Wife, and *Martha*, *Mary*, *Sarah* and *George* their Children from *Wyke* to *Hipperholm cum Brig- house* (both in the West Riding of *Yorkshire*). And, upon Appeal, the Sessions quashed that Order.

Case—*Sarah Catton*, the Mother of *John Catton* otherwise *Speight*, came, on 20th March 1715, from *Shelfe* to *Hipperholm cum Brigthouse*, by Certificate, being THEN PREGNANT with a Bastard-child (the said *John Catton* otherwise *Speight*;) and was afterwards, in April following, delivered of him at *Hipperholm*. The Sessions, being of Opinion “that the said *John Catton*, the Pauper, by Reason “of the said CERTIFICATE, did not gain a Settlement in the said “Township of *Hipperholm cum Brigthouse*, WHERE HE WAS BORN A BASTARD-CHILD as aforesaid,” discharge the original Order. The Certificate itself was returned up, and undertakes that *Shelfe* shall provide for her “and her Child,” whenever they should become chargeable, &c.

On Monday the 2d of this Month, a Motion was made by Mr. *Fawkes*, to quash this Order of Sessions, upon this Objection, “That “the Justices at Sessions had mistaken the Law.” In Support where- of, he cited the Case of *Rex v. The Inhabitants of Helton**, Tr. 16 G. 2. B. R.

* V. ante, N^o 66.

RULE to shew Cause.

The Counsel who shewed Cause (Sir *Richard Lloyd* and Mr. *Weller*) insisted that *Shelfe* was the last legal Place of Settlement of the Pauper. And they argued that this Case is clearly distinguishable from that of *Helton* and *Lidlinch*. For here the Woman is stated to be then pregnant with a Bastard-child; and the Certificate EX-

PRESSLY UNDERTAKES to provide for her and HER CHILD: So that *Shelfe* plainly had *this very Child* in Contemplation; no other Child being named or hinted at, and there being (as they said) a proper Designation of *this Child*.

On the other Side, it was urged that, by the express Resolution in the Case of *Lidlinch*, "a Bastard of a Certificate-woman is settled where born; and Fraud shall never be presumed, where it is not stated."

The Question therefore is "Whether the *unborn Bastard* is to be considered as certificated,

They acknowledged a Certificate to be conclusive against the Parish who gives it; But *that*, they said, is only in such Points as are included in the Certificate. This Certificate undertaking to provide for her and her Child must mean a Child in Being. If she had no other Child; they should have stated the Matter specially.

Lord Chief Justice LEE and Mr. Justice WRIGHT agreed that they must take the Child referred to by the Certificate to be a LEGITIMATE Child THEN IN BEING.

And Mr. Justice FOSTER observed, (to which Observation the other two agreed,) That it did not at all appear that the Parish who gave the Certificate KNEW "that the Woman was then with Child." And he added that there were many Instances where Women were near their Time without being known to be so.

The Counsel for *Hipperholme* proposed that it should go back to the Sessions to be more fully stated. But their Opponents said, and the Court agreed, "that could not be done without Consent." And the Counsel for *Wyke* refusing to Consent—

THE COURT were of Opinion that the Rule must be made absolute.

ORDER of SESSIONS *quashed*:
ORIGINAL ORDER *affirmed*.

Michaelmas Term 20 G. 2. 1746.

No Determination.

Hilary Term 20 Geo. 2. 1746.

No Determination.

Easter Term

20 Geo. 2. 1747.

N^o 91.

Rex v. The Inhabitants of Clapham.

Monday 11th
May 1747.

TWO Justices made an Order for the Removal of *Michael Wilson*, *Margaret* his Wife, and *Jane* their Daughter from *Austwick* to *Clapham* (both in the West Riding of *Yorkshire*.) And, upon Appeal, the Sessions confirmed that Order.

Case—The Pauper was bound a Parish-apprentice, by the Assent of two Justices of the Peace, to one *Thomas Jackson* of *Austwick*, Tenant to the Rev. Mr. *Jackson* of *Clapham*, who had covenanted to indemnify his Tenant against all Parish-charges. *Thomas Jackson* carried him to his Landlord, together with the Indenture, who accepted, received and provided for him. He desired the Mother to provide for the Boy; who did so, for three Years, in *Austwick*; and the Rev. Mr. *Jackson* paid her 20s. a Year. Then he lived with him in *Clapham* eight Weeks; and then run away to his Mother, and remained a Quarter of a Year in *Austwick*; and the Rev. Mr. *Jackson* consented to his being there. Then the Pauper was placed with his Brother, a Mason in *Austwick*, as an Apprentice, by the Rev. Mr. *Jackson* who gave him a new Suit of Cloaths: And he served his Brother*, as an Apprentice, a Twelvemonth or two, in *Austwick*; who took him as an Apprentice, and quitted the Rev. Mr. *Jackson* of him. But the Representatives of the first Master (who was

* It is not stated expressly
"that the
Pauper served
his Brother,
the Mason,
UNDER the
Indenture."

was then dead) *knew nothing of this, nor ever assented to it; nor any Thing of his living with his Mother.*

On Saturday 31st Jan. last, a Motion was made by Mr. Peole and Sir John Strange, to quash these Orders. They cited *Rex v. Inhabitants of East Bridgeford*, ante N^o 43, pa. 133; and *Rex v. Inhabitants of St. Petrox*, N^o 84; and *St. George's Hanover-Square* and *St. James's Westminster*, which see ante, N^o 5, pa. 12.

Upon shewing Cause now, it was insisted by Mr. Clayton, on Behalf of the Parish of *Austwick*, that this Service of the *third* Master in *Austwick* could not be considered as a Service under an *Assignment*; nor as a Service *under the Indenture*; for want of the Consent of the *first* Master.

On the contrary, it was insisted by Sir John Strange and Mr. Poole, on Behalf of the Parish of *Clapham*, that this Service *must* be considered as *UNDER the Indenture*; the first parol Assignment being, to *this Purpose*, good. *Wilson* was the legal Apprentice of *Thomas Jackson*; and the equitable Apprentice of the Rev. Mr. *Jackson*: A legal Assignment is not necessary. And this is a sufficient Service under the *first* Indenture.

To this it was replied by Mr. Clayton, that he gained his *last* legal Settlement at *Clapham*, by the eight Weeks Service. The Agreement with the Mason is *not* an *Assignment*; but an Attempt of a *new Binding*, whilst the first Indenture was *subsisting*: Which, therefore, is not good.

Lord Chief Justice LEE—The Act* of Parliament only requires a *Binding by Indenture*; and gives a Settlement where the last forty Days are served. Here is a *Binding by Indenture*; (though the Term is not stated :) And the first Master *delivers over* the Apprentice and Indenture to his Landlord, who receives him. This, therefore, must be looked upon as receiving him *under the Terms of the Indenture*. * v. 3 & 4 W. & M. c. 11. s. 8. See the Words of it, ante, pa. 16, in the Margin.

If there had been no Inhabitaney elsewhere, *after* the Boy's living eight Weeks with the Rev. Mr. *Jackson* at *Clapham*, the Settlement had been *there*. But a Settlement is fixed at *Austwick*, by the Boy's living *there a Quarter of a Year*, WITH THE CONSENT of his Master. For this is living there *UNDER the original Binding*; as no Dissent of the *first* Master is stated.

Then the Agreement with the Mason is *not* stated to be a *new Binding*. The *first* Master *delivered over ALL his Right* and the *Indenture*, to the Rev. Mr. *Jackson*: And it is *not* necessary to state any Assent from him.

* *V. ante*, N^o
43, pa. 133.
Tr. 13 G. 2.

The Case of *East Bridgeford* * is in Point. However, there is no Ground for the Distinction "That a *second* Master cannot assign to a *Third*;" that is, *so far as to gain a Settlement by the Service under it.*

Mr. Justice DENISON concurred that the Service to the Mason was a Service *under the original Binding*; and that no *actual* Consent of the *first* Master was necessary.

This has been called a *new Binding* to the Mason. But, neither could a *new Contract* be made whilst the former subsisted, and the *original one dissolved*; nor does such a Thing seem to be *intended*. Therefore this is a Service under the *first Binding*: And the Orders ought to be quashed.

Mr. Justice FOSTER was of the same Opinion "That the Orders ought to be quashed."

Per Cur.—

Both ORDERS QUASHED.

V. Post, N^o 95, *Rex v. Inhabitants of St. Mary Kallendars in Winchester, Trin.* 1748, 21 & 22 G. 2. and the Cases referred to at the Bottom of Page 16.

Trinity Term 21 Geo. 2. 1747.

No Determination upon any Settlement-Case, within this Term.

 *Note*—SIR JOHN STRANGE's *Reports* end with this Trinity Term 1747, 21 Geo. 2. (inclusive.)

AND

I believe there are no Cases later or even so late as this Term reported in either Volume of the *SESSIONS CASES* published in 1750: But it is not easy to pronounce with Certainty on these last; because the Cases are placed without Order or Regularity, both in the Body of the Book, and in the Index of the Names of the Cases. I do not observe any Cases, in either Volume, subsequent to Trinity 1746, 19 & 20 Geo. 2.

Michaelmas Term 21 Geo 2. 1747.

No Determination upon any Settlement-Case within this Term.

Hilary Term

21 Geo. 2. 1747.

Rex v. The Inhabitants of Silton.

Nº 92.

TWO Justices made an Order for the Removal of *Milbourn*, Tuesday 9th Feb. 1747. *Amy* his Wife, *John*, *Ann*, *Mary*, *James*, and *Priscilla*, their Children, from *Wincanton* in *Somersetshire* to *Silton* in the same County: And, upon Appeal, the Sessions confirmed that Order.

The short State of the Case was this—*Giles* and *Priscilla*, the Father and Mother of *John* the Pauper, came to *Wincanton* with a CERTIFICATE from *Silton*. *John Milbourn* was afterwards born in *Wincanton*; and was at 12 Years of Age bound out by the Parish of *Silton* to *Michael Hannam* of *HORSINGTON*, Taylor, for eight Years; and served him THERE; and has gained no Settlement since: And though the Indentures were not stamped in Time, yet they were duly stamped &c, and the Duty paid, by Virtue of an Act to enlarge the Time for doing it. And the Sessions held “that *John Milbourn* “did not gain a Settlement in *HORSINGTON* by his serving such Apprenticeship there;” and therefore confirmed the original Order.

Mr. GUNDRY and *Mr. Gould* moved, on *Friday 12th November* last, to quash these Orders; and said this was a new Question upon the *Certificate-act—“Whether the Son of a Certificate-person, born

“ in * 9 & 10 W. 3. c. 11.

* *Ante*, N^o65, *Rex v.**Inhabitants of*
Sherborne.

" in the Parish to which his *Father* came by Certificate, and bound
 " APPRENTICE and serving an *Apprenticeship* to a Master in a
 " THIRD Parish, gains a Settlement in the THIRD Parish, by such
 " *Apprenticeship*."

They cited the Case between the Parishes of **Thornford* and *Sherborne*, P. 15 G. 2. B. R. where Mr. Justice *Denison* said " there
 " could be no Doubt but that as to OTHER Parishes, the *Children*
 " of Certificate-persons would *not* be under the Restraint of the Cer-
 " tificate;" and all the Rest of the Court agreed with him.

So here, *this* Pauper was a Person at large, AS TO EVERY OTHER
 Parish except *Wincanton*, to whom the Certificate was directed and
 delivered.

And they also argued from the Case of *The King* against *The Inha-*
bitants of Petham, ante, N^o 54. See ante, pa. 156, and Sir *John*
Strange 1147, (at the End of the Case.)

A Rule was then made to shew Cause; which was now

Made ABSOLUTE, to QUASH both Orders.

V. Post, N^o , *Rex v. Inhabitants of High and Low Bishop-*
side, 7th June 1755; and *Rex v. Inhabitants of Horsley*,
Post, N^o , 11th June 1755: Both of them in Point with
 the present Determination.

N^o 93.

Rex v. The Inhabitants of Bugden.

Thursday 11th
Feb. 1747.

TWO Justices made an Order for the Removal of *Thomas*
Green and *Mary* his Wife; and *Rachel*, *Mary*, *John*, *Eliza-*
beth and *Thomas*, their Children, from *Amptbill* in *Bedfordshire* to
Bugden in *Huntingdonshire*: And, upon Appeal, the Sessions con-
 firmed that Order.

Special Case—In 1729, *John Green*, the Father of *Thomas*
 the Pauper, came by CERTIFICATE properly attested &c, with
 his Wife and four Children (of whom this *Thomas* the Pauper was
 one) from *Roxton* to *Amptbill*. They remained at *Amptbill*, under
 the Certificate, till *Thomas* the Pauper came of Age: And *Thomas*
 continued with his said Father at *Amptbill* till his Age of twenty-
 one. Then, *Thomas* the Pauper, being more than twenty-one Years of
 Age, married in *Amptbill* and left his Father, and lived there with
 his Wife and Children, distinct from his Father, till removed by this
 Order; and there had the five Children born, which are removed
 by the Order. Three Years after the Marriage of *Thomas*, *John* the
 Father

Father removed from *Amptbil* to *Bugden*, and there hired a Tenement of 10l. a Year, and was rated and paid to the Poor's Rate at *Bugden*: But neither *Thomas the Pauper*, nor his Wife, nor any of his Children ever lived there. It is also stated that *Thomas the Pauper* had not, from his Birth, gained any Settlement for himself by any Act of his own, as far as appears to the Court: Nor have his five Children done any Act whereby to gain any Settlement for themselves.

N. B. The Certificate is express, "that *Royston* will own J. G. and his Wife and four Children, unless they or any of them shall gain in Law a Settlement according to the Statutes of this Realm, that shall justify a legal Settlement in the said Parish of *Amptbill*."

On Wednesday 27th January last a Motion was made by Sir Richard Lloyd, to quash these Orders: And he cited and relied upon the Case of *St. Michael's Coslany in Norwich* and *St. Matthew's in Ipswich*, Tr. 1729, 2 & 3 G. 2. as a Case in Point.

A RULE was thereupon made, to shew Cause why they should not be quashed.

Upon shewing Cause now, it was urged by the Recorder of London (*Stracey*) that the last Settlement of the Father would be the legal Settlement of the Son, unless the Son had gained a new Settlement of his own.

On the other Hand, it was argued by Sir Richard Lloyd, that as the Son did not live with his Father at *Bugden*, he could not gain any Settlement there; being no Part of his Family: And the rather, because he had an independant and distinct Family of his own at another Place. And the Case of *Rex v. The Inhabitants of St. Michael's Coslany in Norwich*, Tr. 1729, 2 & 3 G. 2. B. R. was urged by him, as decisive.

AND of this Opinion was the COURT.

Lord Chief Justice LEE—It was determined in that Case, "that where a Son marries, and leaves his Father's Family, and lives by himself; and after this, the Father gains a new Settlement in another (a third) Parish; the Son shall NOT follow the Father in this new Settlement, thus afterwards gained by the Father:" Which is directly the present Case.

Mr. Justice WRIGHT—The Son, by Virtue of his Marriage, becomes the Head of his own Family: Which is to be considered as an independant Family. And it is a constant Rule, in all Orders of Removal,

Removal, to set forth the *Ages* of the Children, that it may appear to the Court, whether or no they were of *such an Age* as to be *capable of gaining a Settlement of their own, independent of their Father's.*

Mr. Justice DENISON—This *subsequent Settlement* gained by the Father *can not* communicate a Settlement to the Son; who *never resided in Bugden* with his Father; but continued in the Parish of *Amptbill* where his Father lived before. And the Case cited is in Point.

The Pauper *ceased* to be Part of his *Father's* Family, upon his *marrying and living separate and distinct* from his Father.

Mr. Justice FOSTER was of the same Opinion.

Per Cur. unanimously—

Both ORDERS QUASHED.

Easter Term

21 Geo. 2. 1748.

N^o 94.

Rex v. The Inhabitants of Stratton.

Tuesday 3d
May 1748.

TWO Justices made an Order for the Removal of *Stephen Pethick* and *Mary* his Wife; and *John, Elizabeth* and *Mary* their Children, from *Llewannick* in *Cornwall* to *Stratton* in the same County: And, upon Appeal, the Sessions confirmed that Order.

Special Case—*Stephen Pethick*, the Pauper, is of the Age of sixty-five Years, and was born in the Parish of *Whitestone* in the said County; where he lived till he attained the Age of fourteen Years; when his Mother (then a Widow) put him into the said Parish of *Stratton*, and placed him there as an Apprentice with his Brother in Law *John Petherick*, by Trade a Cordwainer, for six Years, to learn the said Trade: But at the Time of placing him as aforesaid, *no Indenture*

indenture of Apprenticeship was executed. In Consideration whereof, his said Mother agreed to pay the said John Petherick 8*l.* viz. 4*l.* in Hand, and 4*l.* more at the End of three Years; and the said John Petherick agreed and was to find the said Stephen Petbick, Meat, Drink, Washing and Lodging during the said six Years; and the said Mother agreed and was to provide the said Stephen Petbick Cloaths during the said Term. That the said Stephen Petbick accordingly lived with and served the said John Petherick in the said Parish of Stratton, as an Apprentice, for the said Term of six Years: During which Time he was provided with Meat Drink Washing and Lodging by the said John Petherick; and the said Mother found him Cloaths, and paid the said J. P. the said 8*l.* pursuant to the said Agreement. That the said Stephen Petbick believes that in or about the last Year of the said Term, one Part of an Indenture was prepared, in order to bind him an Apprentice to the said J. P. pursuant to the said Contract or Agreement: But he does not remember that he EXECUTED the said Part; or that it was executed by his Mother and the said John Petherick or either of them; nor what is become of the said one Part. Whereupon the Sessions confirm the said original Order, upon the Merits; and order the Parish of Stratton to pay to the Parish of Llewannick 1*l.* 6*s.* 8*d.* for their Costs upon the Appeal.

On Wednesday 10th Feb. last a motion was made by Mr. Serjeant Belfield to quash these orders; upon this Objection. "That this does not amount to such a Binding as will gain a Settlement, there being NO INDENTTURE duly executed."

He cited the Case of *Rex v. The Inhabitants of Chesterfield*, 5 Mod. 328. and 2 Salk. 479. S. C. and *Carthew* 400. S. C. where *Ferreson*, Foot-boy to Sir Paul Jenkinson, was put out by Sir Paul to a Barber in Chesterfield for a Year, to learn to shave; and the Barber had 5*l.* from Sir Paul, and was to have the Benefit of the Boy's Work; and the Boy served the Year: It was adjudged to gain him no Settlement in Chesterfield.

N. B. *Salkeld* and *Carthew* (the latter expressly) consider this upon the Foot of a Hiring and Service. Indeed the Margin of *Salkeld* is "Covenant between the Master and a third Person, the Servant not being Party, makes no Apprenticeship." In 5 Mod. 329. it is said, by the Counsel in arguing, "That if this should amount to a Contract be-

N. n

"tween

"tween them, it must be as an *Apprentice*; which *can not* be: Because *not by Indenture*, and therefore *void*." But the *Determination* of the Case did not turn upon this Point.

THE COURT seemed to think this Exception too strong to be answered; and made a Rule to shew Cause why the Orders should not be quashed. Which Rule was now, upon the Motion of Serjeant *Belfield*,

Made ABSOLUTE (without Defence.)

BOTH ORDERS quashed.

Trinity Term

21 & 22 Geo. 2. 1748.

Nº 95.

Rex v. The Inhabitants of St. Mary Kalendar in Winchester.

Saturday 11th
June 1748.

TWO Justices made an Order for the Removal of *John Miles* and *Ann* his Wife, with *Ann*, *John*, *Sarah*, *Elizabeth* and *Richard* their five Children, from *St. Mary Kalendar's* in *Winchester* to *St. Michael's* near *Winchester*: And, upon Appeal, the Sessions quashed that Order.

Case—*John Miles*, the Pauper, twenty-six Years ago was bound by Indenture an *Apprentice*, for seven Years, to *John Gregory* of *St. Michael's* Parish; and, under that Indenture, lived with the said *John Gregory*, and served in *St. Michael's* for five Years; and, at the End of the five Years, left his said Master; and the Indentures were exchanged between the Master and the Apprentice's Father, by Consent of the Apprentice. And about one Year afterwards, the Father of the said *John Miles* contracted with *William Stockdale* of *Twynford* for binding the said *John Miles* Apprentice

nice to the said *William Stockdale* for four Years; and in Consequence of that Agreement, the said *J. M.* went to the said *W. S.* on Trial, and lived with him in *Twysford* for one Year and three Quarters: But no Indenture was executed, nor any other Agreement made. And that while the said *John Miles* lived with the said *W. S.* *John Gregory*, his former Master, lived within four Miles of *Twysford*, and knew of his being in the Service of the said *W. S.* But no other Proof was made "that the said *J. G.* CONSENTED OR AGREED to the " said Agreement between the said *John Miles's* Father and the said "*William Stockdale.*"

On Friday 20th May last a Motion was made by Mr. *Stanyford*, to quash this Order of Sessions: For that the legal Settlement of the Paupers, on this Case stated, is in *St. Michael's*. In support whereof, he cited a Case between the Inhabitants of *Buckington* and *St. Michael, Sebington*, 2 Lord Raymond 1352.

Sir *John Strange*, who now shewed Cause, endeavoured to put it upon the Foot of a Continuation of the old Apprenticeship, and a Consent of the original Master. For Sir *John* admitted his Consent to be necessary; and attempted to shew that the State of the Case implied his Consent.

On the other Side it was insisted, by Mr. *Stanyford* and Mr. *Henley*, that the Exchange of the Indentures was a Cancelling, an Annihilation, an entire Discharge of them to all Intents and Purposes. And if so, there is an End of the Question: For then there could be no Service UNDER them, after such Exchange.

However, supposing the Indentures still to subsist, yet this is no Continuation of the original Service. On the contrary, it is quite a new Contract, and a quite different one.

AND of this Opinion were the whole COURT.

Lord Chief Justice LEE—There can be no Ground to consider this as a Settlement at *Twysford*, but upon supposing the first Indentures to have subsisted, and that the Service at *Twysford* was under them. But that could not be; because the EXCHANGE of the Indentures certainly amounted either in Law, or in Equity, (and they are the same thing in this Case) to a Cancelling of them, and a Determination of the Apprenticeship under them.

Besides, there is NO Consent of the original Master: But the contrary is apparent. His Knowledge of the Fact does not at all imply his Consent to the Transaction.

The Apprentice's living at *Twyford*, was not under, but contrary to the first Indenture: It was in Consequence of a fresh Agreement, and for a new Term. Therefore

Mr. Justice DENISON and Mr. Justice FOSTER concurred. Mr. Justice WRIGHT was not in Court.

The Order of Sessions was QUASHED: And The Original Order AFFIRMED.

V. Post, N^o , *Rex v. Inhabitants of Oustrey*, 13 Feb. 1758.
Rex v. Inhabitants of Whitechurch Canonorum, N^o , Trin. 1765, and N^o , *Rex v. Inhabitants of Tavistock*, Trin. 1767.

No. 96. *Rex v. Inhabitants of Sutton St. Nicholas alias Lutton:*
Rex v. Inhabitants of Leverington.

Tuesday 21st
 June 1748.

* N. B. This
 Order was
 made in Nov.
 1747.

ON Wednesday 18th May last, a Motion was made by Mr. Ford, to quash an * original Order of two Justices made for the Removal of *John Bunting* and *Elizabeth* his Wife, and *Elizabeth*, *John*, *Susannah* and *Mary*, their four Children, from *Leverington* in the Isle of *Ely* to *Sutton St. Nicholas* otherwise *Lutton* in *Lincolnshire*; and also the Order of Sessions made in Confirmation of the said original Order.

† This former
 Order, unap-
 pealed from,
 was made in
 July 1747.

His Objection was, That they had been removed to *Leverington*, from another Parish, viz. *Sutton St. Mary*, by a former † Order of two Justices UNAPPEALED from: By which Order, it was urged, the Parish of *Leverington* was bound down; unless some subsequent Settlement appeared.

And he moved, at the same time, to affirm the said original Order made for removing them from *Sutton St. Mary's* to *Leverington*, and also the Order of Sessions made in Confirmation of it.

RULES to shew Cause, in both Causes.

Mr. Foster, who now shewed Cause, would have had the Court presume "that a new Settlement had been gained." And he cited 2 Salk. 489. between *The Inhabitants of Thackham* and *Findon*, as a Case in Point, "where the Court did presume so;" and 2 Salk. 607. between

between *South Cadbury* and *Braddon*, to prove that "the Justices are not bound to set forth their *Reasons*, in their Judgments."

Mr. *Ford*, in Reply, said that a *new Settlement* shall NOT be presumed: And he cited a Case in *Trinity Term 1732*, 5 & 6 G. 2. between the Parishes of *Horsington* and *North Fellerton*, as in Point.

Besides, the second Removal in the present Case is so *very recent* (only *four Months*) that there could be no Time to acquire a new Settlement.

An Exception was then taken by Mr. *Foster*, to the original Order for removing the Paupers from *Sutton St. Mary* to *Leverington*—viz. That two of the Children appeared to be of seven and eight Years of Age; and it was not stated "that they had not gained a Settlement, or were not settled elsewhere." But

Mr. Justice DENISON and Mr. Justice FOSTER (the only Judges in Court) concurred in Opinion (as to *this Exception*) "That Children of such *tender Age* can not be supposed to have gained any other Settlement than the derivative one from their Father."

And as to Mr. *Ford's* Objection to the second Removal (namely from *Leverington* to *Lutton*) they observed that the Removal to *Leverington* was in *July 1747*, and unappealed from; and the second Order was made in *November 1747*. Now the first is conclusive, as not being appealed from: And there is *not a sufficient Length of Time* to presume a new Settlement. And they mentioned a Resolution to the same Effect, about six Years ago: It was between *The Inhabitants of Godalmin* and *St. Michael's Winchester*, P. 15 G. 2. and was in point with the present Case.—

[It was so. I omitted to report it; because it was so plain and clear to my Apprehension, "that four or five Months" (which was the space of time between the Making of those two Orders) "could not be esteemed a *sufficient Length of Time* whereupon to ground such a Presumption."

In a Case between the Parishes of *Capel* and *West Peckham* in 12 G. 1. there was *four Years* Distance of Time; and yet the Court would not intend a new Settlement to have been gained. *V. Sessions Cases*, Ed. 1750, Vol. 2, pa. 81. N^o 83. *Foley*, pa. 318. *Fortescue* 327.]

Per Cur.—

The SECOND original ORDER (for Removal of the Pauper from *Leverington* to *Lutton*) and the ORDER OF SESSIONS confirming it, were QUASHED: And

The

The FIRST original ORDER (for Removal of them from Sutton St. Mary's to Leverington) CONFIRMED: But the ORDER OF SESSIONS made in Confirmation of this original Order was QUASHED.

Note—

The first original Order of two Justices was confirmed by the Sessions; though never appealed from.

And Mr. Foster, the Counsel for Leverington, praying to have this confirmatory Order of Sessions quashed, and the other Side not opposing it, this Order of Sessions was quashed*, as being a voluntary and as it were extra-judicial Act of the Sessions, to confirm an Order which was not complained of: It was agreed, that one Reason of mentioning the Ages of Children, in Orders, was their not being removable from their Mother at a very tender Age (*viz.* under seven,) but to be sent with her for Nurture.

* The very same Thing was done in the Case of Godalming and St. Michael's in Winchester: The Order of Sessions which confirmed the first original Order of the first of December 1740, was quashed, because it was not made upon Appeal; for which Reason it was agreed by the Court and Counsel to be a void one.

N^o 97. Rex v. The Inhabitants of St. George Hanover-Square.

Tuesday 28th
June 1748.

TWO Justices made an Order for the Removal of John Hays, aged ten Years, Thomas, aged eight, and Matthew, aged three Years, the three Children of Anne Hays Widow, from Aylesbury in Buckinghamshire to the Parish of St. George Hanover-Square in Middlesex: And, upon Appeal, the Sessions confirmed that Order.

The Case states that the Woman was born at Aylesbury; that she was married to Thomas Hays an Irishman, whose Settlement can not be found, and who told her "that he had none;" that these three Children were born of her, in lawful Wedlock, in St. George's Hanover-Square, where her said Husband was a Day-labourer; and she went a Chairing.

Note—It does not appear that the Woman had gained any Settlement any where for herself: Nor was it positively stated "that her Husband had none."

On *Saturday* the 18th of this Month, a Motion was made by Serjeant *Hayward*, to quash these Orders: And a Rule was made to shew Cause. And upon Cause being now shewn, he argued that where *no Settlement of the Father is to be found*, the Children shall be sent to the *Settlement of the Mother*. To prove this, the following Cases were cited by him and Mr. *Bennè*, who was on the same Side with him. *M. 12 Ann.* between **Dunsfold* and *Winsborough Green*; and *M. 3 G. 2. B. R.* between †*St. Giles's* and *St. Margaret's Westminster*; and *H. 12 G. 1. Rex v. Inhabitants of || Westram*: And the *Mother's Settlement* must be taken, they said, to be at *Aylesbury*; since she was *born there*, and *no subsequent Settlement appears*: For *de non apparentibus et non existentibus eadem est ratio*.

A Woman's Settlement is only SUSPENDED DURING MARRIAGE with an *unsettled Husband*, by the Case between †*Stretford* † *Ante, No. 39, pa. 122.* and *Norton, H. 12 G. 2.* But this Woman's Husband is *dead*: She is stated to be a *Widow*. And Children born in lawful Wedlock are to be sent to the Place of the *Mother's Settlement*; and *not* to be sent as Vagrants to the Place of their Birth. To prove which, the Case between the Parishes of *Morton* and *Hanway, H. 1 G. 1.* was cited. *V. Portescue's Reports 217, Hanway and Manton.*

Sir *John Strange*, of Counsel on the other Side, for *Aylesbury*, said that the *Facts stated* were *not* a Foundation strong enough for the Gentlemen to raise their Law upon.

And Lord Chief Justice LEE said, This is *no Case at all*: For it is not stated "that the *Husband HAD NO Settlement*;" nor "that the *Woman's Settlement was at Aylesbury*." It does not appear that the *Husband had no Settlement*: It is only stated "that the *Woman said he told her so*." It should have been stated as a *Fact* "that he *had none*."

Sir *John Strange* said that if it had been so stated, he could have shewn "that the Children, though legitimate, would have been settled where they were born." *V. Carthew 433. Whitechapel v. Stepney*; and 3 *Salk. 257. Luckington v. St. Austin's.*

Per Cur. as the *Facts* are not sufficiently stated, the Rule must be discharged.

The RULE was DISCHARGED; and
The ORDERS AFFIRMED.

* *V. Cases of Settlements*, pa. 22. No. 31. *Foley*, pa. 284. *Portescue 314. Sessions Cases*, Ed. 1750, Vol. 1. pa. 56, No. 53.

† *V. Sessions Cases*, Ed. 1750, Vol. 1. pa. 104. No. 97. *Cases of Settlements*, pa. 76, No. 98. *Foley*, pa. 287.

‡ It was *Rex v. Inhabitants of Chidingstone*, Hil. 1725, 12 G. 1. Resolved "that the Wife's Settlement before Marriage remains, where no Settlement of her Husband appears." *V. Sessions Cases*, Ed. 1650, Vol. 2. pa. 115, No. 110. S. C.

Michaelmas Term

22 Geo. 2. 1748.

N^o 98.

Rex v. The Inhabitants of Wrinton otherwise Wrinton.

Friday 18th
Nov. 1748.

TWO Justices made an Order for the Removal of *Ann Stokes*, Single-woman, from *Chewstoke* to *Wrinton* otherwise *Wrinton* (both in *Somersetshire*;) And, upon Appeal, the Sessions confirmed that Order.

Case—The Pauper, being legally settled in *Wrinton*, and being about thirteen Years of Age, went into *Chew Magna*, to the House of her Aunt *Hannah Spear*; and soon afterwards went into the Parish of *Winford*, and worked with one *Nicholas Walker*, Cloth-worker, in the Business of burling Cloths, by a weekly Hiring or Agreement, at the weekly Wages of 1 s. 6 d. each Week in the Winter, and 2 s. each Week in the Summer: And on the Saturday in each Week, the said N. W. when he paid the Pauper her Wages for that Week, said to the Pauper “that she should come the Week following;” which the said Pauper accordingly did, and renewed the Contract for the Week ensuing, in the same Method. That the Pauper continued to work with the said N. W. in *Winford* aforesaid, in the Manner aforesaid, for the Space of one Year and a Half: But during all that Time CONSTANTLY RETURNED in the Evening, and lodged at her Aunt’s in *Chew Magna* aforesaid, and also resided with her Aunt there on SUNDAYS during the said Time. That on the last Saturday of the said Service, the Pauper covenanted to serve the said N. W. for a Year, for the Wages of 1 l. 10 s. and immediately entered into the said Service, and continued therein, with the said N. W. in the said Parish of *Winford*, for eleven Months next following; and then, upon some Difference between her and her said Master, they parted; and she was paid the full Proportion of her said Wages for the said eleven Months. Whereupon the Sessions being of Opinion “that the said Pauper did not acquire a Settlement by such Service in “*Winford*,” doth confirm the said Order of the two Justices.

On

On Saturday 18th June last, a Motion was made by Mr. Gapper, to quash these Orders; who urged that here was a good *Hiring for a Year*; and also a *Service for a Year*, within the Statute of 8 & 9 W. 3. c. 30. sect. 4.

He cited the Case of *Rex v. The Inhabitants of South Moulton in Suffolk*, in 1 Lord Raymond 426. H. 10 W. 3. where it was holden "that a Service for half a Year, and then for another half Year under a subsequent *Hiring** for a whole Year, is enough." And 2 Lord Raym. 1511. *Rex v. Inhabitants of Aynhoe*, M. 1 G. 2. S. P. resolved accordingly; viz. "That the Hiring and Service need not be under the *same Contract* *."

RULE to shew Cause.

* And see Lucas's Reports (10 Mod.) 287. S. P. accord.

The Counsel for the Parish of *Winsford*, who now shewed Cause, (Mr. Henley and Mr. Gould) admitted that the Service need not be under one and the same Hiring, as has been settled in the Cases above cited: (Though perhaps those Cases were carried full far.) But they argued that this Case differs much from those Cases: For, under 8 & 9 W. 3. c. 30. sect. 4. there must be a *Service FOR A YEAR*. Now this is only a *Service* for eleven Months under an *Hiring for a Year*; though there was an *Employment* for above a Year and a half, if the Hirings for a Week are included. But a *Day-labourer* might as well be settled, as this Pauper, upon the same Principles. The Act requires a *Continuing and Abiding* in the Service; and the very Words themselves import it: *Service* includes *Residence in the House or at the Expence* of the Master. And the 5 Eliz. c. 4. sect. 12. considers Persons hired *weekly*, as *Day-labourers* only: And the third Section of the same Act prohibits the Hiring or being hired for *less* than a Year, to Clothworkers.

Sir John Strange and Mr. Gapper, on Behalf of *Wrinton*, cited many Cases to prove how favourable the Court had always been to Settlements. And they said, it was not necessary that the Servant should lie in the *House* or even in the *Parish* where the Master resides: It is the *Service* that gains the Settlement. To prove which, they cited the Case of the *Oxford Stage-Coachman*; whose Servant was settled at *Wycombe*, where his Service was performed.

Lord Chief Justice LEE said it had been now settled "that a Service for less than a Year, under a Hiring for a Year, may be coupled to a prior Service which was not under a Hiring for a Year; provided it be a Continuance of the *same Service*."

O o

But

But both **HE** and **Mr. Justice WRIGHT** said, Their only Doubt was, "Whether on these first Hirings, the Girl was to be considered as a *HIRED Servant* within the Acts; or whether she was to be considered as a *Weekly-labourer*, precedent to the Hiring of her for a Year." But

Mr. Justice DENISON said he had no great Difficulty: For he thought the Court should not go an Inch further than they did in the Case of *Aynhoe*.

This is a little Girl hired to burl Cloth: Probably twenty such Children were so hired. The Hiring was for a Week: She lay at Home, and was at Home on Sundays. This was certainly as a *Day-labourer*; not as a *Servant in the Family*, and Part of the Family.

The Act of Parliament plainly means a *hired Servant*, who is PART OF THE FAMILY, wherever he lies. I know this Clothworking Business; and am therefore afraid of the Consequences of extending these Settlements too far. These Clothworkers hire perhaps a hundred Children, in different Parts of the Work: And it would be very inconvenient, if the Hiring any of them for a Year, after some Time of Service under a weekly Hiring; and their subsequent Service of perhaps only a single Week under that yearly Hiring should gain them a Settlement.

Mr. Justice FOSTER thought the Cases had been carried full far enough already. He went through the Course of the Acts of Parliament, and descanted upon them; and had no Doubt but the first Hiring ought to be *EJUSDEM generis* with the last.

Now a *hired Servant* is always under the Government, Discipline and Control of the Master, even on Sundays. But this Child was not at all in this Master's Service either on NIGHTS or on SUNDAYS.

THE OTHER JUDGES concurring—(For **Lord Chief Justice LEE** and **Mr. Justice WRIGHT** were satisfied by what **Mr. Justice DENISON** had said—)

Per Cur.

Both ORDERS were AFFIRMED.

Hilary Term

22 Geo. 2. 1748.

Rex v. The Inhabitants of St. George's Southwarke. N^o 99.

And afterwards

Rex v. The Inhabitants of St. Olave's Southwarke.

TWO Justices made an Order for the Removal of *John Peake* ^{Tuesday 7th Feb. 1748.} from St. George's to St. Olave's, both in Southwarke: And, upon Appeal, the Sessions discharged that Order.

Case—John Peake the Pauper, being a *Lunatic*, was by a Certificate properly attested under the Hands and Seals of two of his Majesty's Justices of Peace for the County of Surrey and signed by the Churchwardens and Overseers of the Poor of the Parish of St. George Southwarke in the County of Surrey, directed "To all whom these Presents may concern," and delivered to the Governors of Bethlem Hospital in the Parish of St. Stephen Coleman-street in the City of London, IN ORDER TO GET THE PAUPER CURED, as is usual in those Cases, acknowledging the said Pauper to be legally settled in the said Parish of St. George in the said County of Surrey: But the said Certificate was not directed in particular, nor delivered to the Churchwardens or Overseers or any of the Officers of the said Parish of St. Stephen Coleman-street, in which Parish the said Hospital of Bethlem is situate. It appeareth also, that upon the Lunatic's being discharged out of Bethlem Hospital, the said Certificate was DELIVERED BACK, as is usual in such Cases, by the said Hospital of Bethlem to Mr. Sweetenham one of the Overseers of the Poor of the said Parish of St. George. But it did not appear that the Execution of the said Certificate was proved by any Person whatsoever. And the Sessions, being of Opinion "that the said *John Peake* is last legally settled in "the said Parish of St. George Southwarke in the "County of Surrey, BY VIRTUE OF THE SAID CERTIFICATE," order the Appeal to be allowed, and the Order of the two Justices to be discharged.

On *Tuesday 23d June 1747*, a Motion made to quash this Order of Sessions: And a Rule was made to shew Cause why it should not be quashed.

Upon shewing Cause, on *Saturday 6th Feb. 1747*, it was, by Consent, ordered that the first Day of next Term be given to the Prosecutors to shew Cause why the Order of Sessions made for quashing the original Order for removing *John Peake* from *St. George's Southwarke* to *St. Olave's Southwarke* should not be quashed, and the original Order confirmed: And in the mean Time, it is referred back to the Justices of Peace for the County of *Surrey*, to re-examine into the Merits of the Order of Sessions; and to make further Order thereupon, according as shall appear to them upon the Merits thereof. Which further Order was made accordingly, and is as follows—

That *John Peake* the Pauper, being a *Lunatic*, was, by a *Paper-Writing* BEARING THE FORM OF A CERTIFICATE, dated in *December 1736*, mentioned to be signed pursuant to the *Act** of Parliament in that Case made and provided; which said Pauper was delivered by *Ralph Sleigh*, Deputy Clerk of *Bethlem Hospital*, to *William Kinleside* Son of *William Kinleside* deceased, who entered into Bond, as a Security, to defend the said Hospital against any Charges which they might be put to; and in Consequence thereof, the said *William Kinleside* the Father did pay for eight Years that the Pauper was deemed incurable. And it further appeareth unto us, that the said *Paper-Writing* was signed by the *Churchwardens and Overseers* of the Poor of the Parish of *St. George Southwarke*, attested by two *Witnesses*, and allowed by two *Justices of the Peace*, ACCORDING TO THE *STATUTE* in that Case made and provided; and that the Hand of *Thomas Inwin*, Esq; was subscribed, as one of the Justices to the said *Paper-Writing*: Which said *Paper-Writing* was delivered by *William Kinleside* to one *Mr. Sweetenham*, whom he believed to be a *Parish-Officer* of *St. George's Southwarke*. But the said *Paper-Writing*, nor any other was produced to this Court; nor did it appear to us that the said *Paper-Writing* was signed by any other Person than as above; nor did it appear that the said *John Peake* the Pauper had ever gained any Settlement in the said Parish of *St. George Southwarke*, otherwise than by the above *Paper-Writing* purporting to be a *Certificate*.

This Court doth therefore Order that the Appeal of the said Appellants be, and the same is hereby discharged and dismissed: And that the Order or Warrant of the said two Justices of the Peace be, and the same is hereby allowed and confirmed.

* 7. 8. 9
W. 3. c. 30.
and also
3 G. 2. c. 29.
sec. 8.

N. B. The Appellants were the Parish of *St. Olave Southwarke*; and the *first* Order of Sessions *allowed* their Appeal, and *quashed* the original Order: But now, this *last* Order *dismisses* the Appeal, and *confirms* the original Order. So that the two Orders of Sessions are diametrically opposite to each other: And the Name of the Cause in this Court is consequently changed.

Tuesday 22d November 1748, the Counsel for *St. Olave's* moved to quash this *last* Order of Sessions, and to *affirm* the *first* Order of Sessions; and had a

RULE to shew Cause.

Cause was now shewn.

THE COUNSEL for *St. George's* Parish were therefore, now, for supporting this *last* Order of Sessions; and argued that the Man being a miserable poor Lunatic and his Settlement unknown, the Parish of *St. George* signed, out of mere Charity, a Paper-Instrument serving to get him into *Bethlem* Hospital: From whence he was discharged as incurable. His true Settlement then appeared to be in *St. Olave's*; unless this Paper-Instrument, never yet produced, stands in the Way.

They DENIED this Paper TO BE a Certificate: It was not given for the Purposes mentioned in 13 & 14 C. 2. c. 12. sect. 3. or 8 & 9 W. 3. c. 30. And the Act of 3 G. 2. c. 29. sect. 8. has not taken away the Necessity of proving the Hand of the Justice; which was not done here: Neither was the Instrument produced.

On the other Side it was insisted by the Counsel for *St. Olave's* (who were for quashing the *last* Order of Sessions) that this was a LEGAL Certificate; and that it is a CONCLUSIVE to the Parish who give it; though not addressed to any particular Parish. To prove this, they cited, *Rex v. Inhabitants of St. Nicholas in Harwich*, ante, pa. 176. (N^o 62.) and they cited the Case between the *Inhabitants of Honiton* and *St. Mary Axe*, in 2 Salkeld 535. and that of the *Inhabitants of New Windsor* and *White Waltham*, Tr. 5 G. 1. and also *Rex v. Inhabitants of Woodchester*, ante, N^o 67. and *Rex v. Inhabitants of Headcorn*, Tr. 18 G. 2. ante, N^o 86. where it was holden "that the Woman being called Wife in the Certificate, it was conclusive upon the Parish who gave it."

As to the Certificate's not being produced—It could not be produced by *St. Olave's*, who never had it: It was returned to *St. George's*.

Nor

Nor was it necessary to *produce* it: A reasonable Evidence "that there *was* such a Certificate," is sufficient. And though it is not said to be "under Hand AND Seal," yet *that* is not necessary. However, it is helped by the Words "according to the Statute." And it could not "bear the *Form* of a Certificate," (which it is stated to do) unless it was under *Seal*.

Lord Chief Justice LEE—I do not see any Law in the Case. The only Question is "Whether this be a Certificate WITHIN "THE ACT of Parliament."

The Thing necessary to infer the Obligation (which I agree to be binding on the Parish) is the *Owning* the Pauper to be a Person *legally settled in their Parish*.

Now this Paper-Writing, not produced, is only said to *bear the FORM of a Certificate*. Then the Order states what was done upon this Paper-Writing: And it is stated, "that it was *signed, attested, and allowed according to the Statute*."

But the Statute, *in Terminis*, requires it to be *under the SEALS of the Churchwardens*. In the Conclusion of the Case it is called again, "a Paper-Writing *PURPORTING to be a Certificate*."

This was the Evidence before the Justices.

Now it does *not* appear that this was a Certificate *OWNING the Man to be an Inhabitant settled in St. George's*. It rather appears *otherwise*, by the State of the Case. And it was *delivered back again*, when the Lunatic was discharged. This Matter was all before the Sessions: And *no other Pretence* of a Settlement in *St. George's* appeared to the Justices.

Therefore we can not determine "that the Sessions have done "WRONG:" On the contrary, it *rather* seems that they have done *right*.

THE THREE OTHER JUDGES concurred that this could not be supported as a Certificate under 8 & 9 W. 3. c. 30. And

Mr. Justice FOSTER added, That he very much doubted (though he gave no absolute Opinion) whether a Certificate given for *THIS particular Purpose* of Admission into an Hospital for Cure, could be considered as a CERTIFICATE *under that Act*; which was made with a View to Persons coming out of one Parish into another, to get their Livelihood by their *Work and Labour*.

Per Cur. unanimously—

The ORIGINAL ORDER of two Justices, and
The LAST ORDER of Sessions were AFFIRMED.

Note—

Note—The first Order of Sessions (which was imperfectly stated, and sent back to be restated) was considered by the Court as now quite out of the Case and a perfect Nullity. It was also ordered (on the Application of the Counsel for St. George's Parish) that the Recognizance entered into by that Parish, on their removing the original Order of two Justices and the first Order of Sessions by *Certiorari*, be discharged.

Rex v. The Inhabitants of Hacheston.

N^o 100.

TWO Justices made an Order for the Removal of *Sarah Frost* Saturday 11th Feb. 1748. and *John, Alexander, Mary, Sarah and Robert Frost*, her Children from *Baudsey* to *Hacheston* (both in *Suffolk*;) And the Sessions, upon Appeal, confirmed that Order.

Case stated—*John Frost* and *Sarah* his Wife, having a Settlement at *Hacheston* in *Suffolk*, obtained a *Certificate* in due Form of Law, for themselves and such Child or Children as they should have during their Residence in *Baudsey*, from *Hacheston*, dated 14 Oct. 1738; and by Virtue thereof went to live at *Baudsey*, and there had *J. A. M. S. and R.* their Children. *John Frost* the Father, about two Years before his Death (which happened about three Weeks after *Midsummer* last 1747,) PURCHASED a Copyhold-Cottage and a small Yard or Piece of Land thereto adjoining, in *Baudsey* for 10*l.* and was thereto admitted, and paid his Purchase-Money and Fines and Fees accordingly. And the said Cottage not being habitable, the said *John Frost* the Father pulled down the same, and erected a new one, chiefly by his own Labour, being a Bricklayer or Mason; and partly at his own Expence, or upon his own Credit: Which Building was estimated by a Bricklayer or Mason and a Carpenter, who upon their Oaths in Court valued the Workmanship and Materials thereof, at 80*l.* 10*s.* 1*d.* That 4*l.* or 5*l.* Part of the said Expence remained unpaid at the Time of the Decease of the said *John Frost* the Father: But it did not appear, on the one Hand, that he had paid more than 30*s.* or 40*s.* and that, by a Return of Work to the Carpenter who was concerned therein, towards the Charges or Expences of the Building; nor, on the other Hand, did it appear by any Evidence, that there remained any Thing more due from him for the said Building or Materials, at the Time of his Decease, than the said Sum of 4*l.* or 5*l.* And the said *J. F.* the Father

Father died also indebted in 10*l.* for Money borrowed. *John, Alexander, Mary, Sarah* and *Robert* the Children not having gained any Settlement for themselves, distinct from that of their Father, resided with him in the said Cottage, as a Part of his Family, for above forty Days each, and to the Time of his Decease, as aforesaid.

Upon the Death of *John Frost* the Father, by the Custom of the Manor whereof the said Copyhold-Cottage and Land is holden, the said *Sarah* his Widow was intitled to a third Part of the said Premises for her natural Life, for or as her Dower: And the Premises, subject to her Dower, descended to the said *ROBERT* the youngest Son of the said *J. F.* the Father as his Heir at Law, by Virtue of the said Custom.

Neither the said *Sarah* the Widow or the said *Robert* had been admitted to the said Premises or any Part thereof; nor had they incurred any Forfeiture by Want of such Admission.

After the Decease of *J. F.* the Father, *Sarah* his Widow and all the said Children, as a Part of her Family continued to reside with her in the said Cottage for more than six Months and until their Removal from thence by the said Order of two Justices: And during that Time, the said *Sarah* the Mother complained, to be relieved; and, by an Order for that Purpose obtained, was relieved accordingly: And within a few Days after the said Order of Relief was delivered to the said Parish of *Baudsey*, the said Order of Removal was obtained. Whereupon the Sessions is of Opinion "that none of the said Paupers gained any Settlement in *Baudsey*, by Reason of any of the Facts above stated;" and therefore confirm the original Order of two Justices, for the Removal of them to *Hac-*
beston.

On *Wednesday* 25th *Jan.* last, a Motion was made by *Mr. Ford*, to quash these Orders; upon this Objection to the original Order of two Justices:—It states them to come into *Baudsey* by Certificate; and yet removes them upon being *LIKELY* only to become chargeable. He insisted likewise, that the Order of Sessions was bad upon the Merits: For that *John Frost* had gained a Settlement in *Baudsey*. In Proof whereof, he cited *Rex v. Inhabitants of Benjoe*, *H. 2 G. 2.*

Sir Richard Lloyd, who was to have shewn Cause now, denied the latter Position, as to the Settlement; but owned he could not support the original Order; as the Paupers, who appeared to have come into the Parish of *Baudsey* by Certificate, are not adjudged to be *ACTUALLY* become chargeable but only likely to become so. And

THE

THE COURT and Counsel all agreed that it was to no Purpose to enter into the * *Merits*, when the original Order appeared to the Court to be BAD upon the Face of it: Since the Court could not possibly affirm the Order of Sessions confirming it.

Therefore BOTH ORDERS were QUASHED.

As to the Merits—V. Post, N^o Rex v. Inhabitants of Dunburch, Hil. 1766. S. P.

Rex v. The Inhabitants of St. Ebb's.

N^o 101.

TWO Justices made an Order for the Removal of Caleb Guy from Holywell otherwise St. Cross in the Suburbs of Oxford, to St. Ebb's in Oxford: And the Sessions, upon Appeal, confirmed that Order. Monday 13th Feb. 1748.

Case stated—Caleb Guy went to Holywell otherwise St. Cross, to be hired to Thomas White, who lived in and was an Inhabitant of the said Parish of Holywell; and being asked "What he would give," he said "He would not give him more than he gave to his former Boy, which was 20s. a Year." He was then hired in this Manner; was to come for a QUARTER of a Year, and to have after the Rate of 20s. a Year; and if he and his Master liked each other, was to continue ON. He continued a Year and a Half over and above the said Quarter, without any further or other Hiring; and received his Wages as he had Occasion for the same.

On Wednesday the 1st Instant a Motion was made by Mr. Nares, to quash these Orders: For a conditional Hiring is a Hiring for a Year, PROVIDED the Condition be performed. Rex v. Inhabitants of Lidney†, Tr. 6 & 7 G. 2. B. R. and Rex v. Inhabitants of New Wind-† Ante N^o 1. for ||. H. 8 G. 2. B. R. (Colonel Meyrick's Servant) accordingly. || Ante, N^o 7. So that, upon the whole, the Settlement is in Holywell; and not in St. Ebb.

A RULE was then made to shew CAUSE: And now, upon Motion, it was made ABSOLUTE; no Cause being shewn.

V. Post, N^o 109, Rex v. Inhabitants of Ilam, Mich. 1751, 25 G. 2.

N^o 102.

Rex v. The Inhabitants of Mawnan.

UPON Friday 4th Nov. last Mr. Henley moved to quash an Order of Sessions confirming an Order of two Justices made for removing *Jane Luckey* from *Falmouth* to *Mawnan*; their Determination upon the Case stated, being (as he said) contrary to Law: It was founded upon her having served an *Apprenticeship* in *Mawnan*.

His Objection was, "That it was only a PAROL Binding; not "by *Indenture*:" Whereas the Act of 3 & 4 W. & M. c. 11. s. 8. is confined to a Binding by INDENTURE.

RULE to shew CAUSE.

He now moved to make the Rule absolute. And Mr. Ford, of Counsel on the other Side, owned it could not be supported.

RULE made ABSOLUTE.

Easter Term

22 Geo. 2. 1749.

N^o 103.

Rex v. The Inhabitants of Cuckfield.

Monday 8th
May 1749.

UPON Saturday 22d April, Sir John Strange moved to quash an Order of Sessions which vacated (in Part) an Order of two Justices made for removing *Turner Bristow*, *Elizabeth* HIS WIFE, and *Scipio* and *Anne* THEIR Children from *Cuckfield* in *Sussex* to *Edenbridge* in *Kent*.

The

The Sessions, on Appeal, generally, and without assigning any particular Reason or stating any special Case, confirm the said Order of two Justices, as to the Father: and quash it *as to the SAID Elizabeth and the SAID Children.*

His Objection was—That the Wife and Children *can not be separated* from the Husband, so long as he remains alive.

A Rule was made, to shew Cause “why the Order of Sessions should not be quashed, so FAR as it relates to the Wife and Children.”

Mr. Henley, who was to have shewn Cause, owned it could not be supported as it now stands: But he desired that it might be sent back, to be more particularly stated; alledging the real Fact to be “that the Woman was *not* his Wife; nor, consequently, the Children his *legitimate* Children.”

Sir John Strange, *contra*—This is an Allegation contrary to what appears on the Face of both Orders: For *both* Orders call her his Wife, and Scipio and Anne their Children. And a Wife and Children can not be separated from the Person who is Husband and Father to them.

But Mr. Henley appealed to the Order of Sessions, which was not quite as Sir John stated it; but varied the Expression, and called them “*the said Elizabeth*” and “*the said Children*.”

The Rule was enlarged to next Term: And it was sent back to the Sessions, to re-examine the Matters relating to the Settlement of the Wife and Children, and state them fully to the Court.

N. B. I should have deleted this Case, if it had not occurred to me, that possibly some Gentlemen might have taken their Note of the former Motion only; and would like to know how it went off, on shewing Cause.

Trinity Term

22 & 23 Geo. 2. 1749.

N^o 104.

Rex v. The Inhabitants of St. Helen's in Abingdon.

Tuesday 6th
June 1749.

TWO Justices made an Order for the Removal of *Anne Hutt*, the Wife of *Joseph Hutt* (who had absconded for six Months) and her four Children (naming them and specifying their Ages) from *St. Saviour's Southwark* to *St. Helen's*: And the Sessions, upon Appeal, confirmed that Order.

The special Case set forth long and minute Circumstances and parol Evidence concerning an *Indenture of Apprenticeship* (not produced) of *Joseph Hutt* the Father, to *William Hutt* his Grandfather: Upon the whole of which, it appeared that the Indenture was *not produced*, and probably (even to very strong Presumption) was *never stamped*.

On *Tuesday* 18th of *April* last, a Motion was made by Mr. *Lawson*, to quash these Orders. He made two Objections to the original Order, and two to the Order of Sessions.

To the original Order—

1st, It sends the Woman from her Husband.

2dly, It adjudges *St. Helen's* to be the Place of *her* Settlement: Whereas, it should have been *his*, the Husband's.

To the Order of Sessions—

1st, There is only *parol* Evidence of an Indenture; which ought itself to have been *produced*.

2d, It does not appear to have been *stampd*.

Upon shewing Cause now, it was urged that the Settlement was in *St. Helen's*; And the Case in 2 *Salk.* 470. between the Inhabitants of *Dumbleton* and *Beckford* was cited; and also *Rex v. Inhabitants of St. Mary Chester*, H. 14 G. 2. B. R.

Mr. *Ford*, for *St. Helen's*, said that the Case cited out of *Salkeld* was a *strange* Case. And I find by my *own* Notes, that the *Chester* Case was never determined: It was, by Consent, sent down to be more certainly stated, on *Tuesday* 17th *November* 1741.

Per

Per Cur. clearly—There is not enough stated to show that this is a Binding within the Act. Therefore

Both Orders QUASHED.

Rex v. Inhabitants of West Torrington. No 105.

MR. *Wilmot* moved to quash an Order of Sessions quashing an Order of two Justices, for removing *John West* and *Anne his* Tuesday 13th
June 1749. Wife from *West Torrington* to *North Thoresby*, (both in *Lincolnshire*.) The Record says—"Be it remembered that the General Quarter-Sessions of the Peace of our Sovereign Lord the King was held by Proclamation at *Kirton*, in and for, &c, on Monday the 9th of January, &c; and from thence adjourned to *Caister* in the said Parts and County, to Wednesday the 7th, &c: Where there was then no Sessions held, pursuant to the said Adjournment. And that at the General Quarter-Sessions of the Peace of our said Lord the King held at *Horncastle*, in and for &c, on &c, before &c, Appeal to THIS Court &c."

1st Objection, The Sessions at *Horncastle* could not take it up at all, for want of Jurisdiction; being held without Adjournment. *Rex v. The Inhabitants of Polsted*, H. 20 G. 2. B. R.

2d Objection, The Appeal is not made to the next Quarter-Sessions.

Mr. *Hewitt*, contra—1st, The first Sessions was holden at *Kirton*, was adjourned to *Caister*: But none was there holden. Then a Sessions was held at *Horncastle*; at which last Sessions, this Order was made. But it does not appear that either the first, at *Kirton*; or the second, at *Caister*, was well holden. For it does not appear before what Justices that at *Kirton* was holden. So that the last might be an original Session, in Point of Law; the two former being null. Therefore the Case cited (which I agree to) does not come up to this Case now before the Court.

2d—The same Answer serves equally to this Objection: viz. That if the first Session at *Kirton* was not good, and none was holden at *Caister*; then this at *Horncastle* on Friday 13th January was the next Quarter-Sessions.

Mr. *Wilmot* in Reply—The Act of 36 E. 3. c. 12. expressly directs four Sessions only to be holden in a Year; viz. within the U-

sur of the Epiphany; within the second Week of Lent; between Pentecost and St. John the Baptist; and within eight Days of St. Michael.

The 12 R. 2. c. 10. directs one in each Quarter of the Year, at least.

Then 2 H. 5. stat. 1. c. 4. specifies the Times of holding them; which are, in the first Week after Michaelmas, in the first Week after Epiphany, the first Week after the Clause of Easter, and in the first Week after the Translation of St. Thomas the Martyr; and more often, if need be.

This appears to be a General Quarter-Session holden at Kinton; and an Adjournment from Kinton to Caistor (where none was holden:). And the third, at Horncastle, mentions no Adjournment from any former Session.

Lord Chief Justice LEE asked Mr. Hewitt if he had any Case to shew that it was necessary, in a Session, only for the Purpose of Adjournment to name the Justices before whom it was holden.

To be sure, if the first Session was well holden; the Session was completed; if there was no Adjournment of it from thence to Horncastle: And the Case of *Polsted* is in Point. [It is for See it in 2 Sir John Strange 1263.]

THE RULE to quash the Order of Sessions and confirm the original Order, was ordered to be MADE ABSOLUTE, unless Cause be shewn Tomorrow. And no Cause was then shewn.

Michaelmas Term 23 G. 2. 1749.

No Determination upon this Subject.

395

Hilary Term 23 Geo. 2. 1749.

Nor in this Term.

Easter Term 23 Geo. 2. 1750.

Nor in This.

Trinity Term 24 Geo. 2. 1750.

Nor in this Term.

THERE was indeed a Case of *Rex v. Inhabitants of Bodmyn*, which was twice before the Court in *Michaelmas* Term 1749; and afterward, in *Easter* Term 1750: But it was proposed that both Orders should be *quashed by Consent*, and a new Order made; and this was afterwards agreed to, on 24th *November* 1750.

The original Order removed the Paupers *John Beard*, with his Wife, and *Maud* their Daughter, from *Bodmyn* to *Warleggan*: *Warleggan* appealed to the Sessions. The first Sessions were equally divided: And "therefore did not come to any Resolution thereupon." So says the Order: But there is no express Adjournment of the Appeal. The subsequent Sessions take it up thus—"Upon the Rehearing of an Appeal undetermined at the last Sessions, &c, &c;" and discharge the original Order. It was objected that this subsequent Sessions had *no Jurisdiction* to take the Appeal up again; the former Sessions not having adjourned it.

Michaelmas Term

24 Geo. 2. 1750.

N.º 106. Rex v. Inhabitants of St. Maurice's in Winchester.

Wednesday 21st
Nov. 1750.

TWO Justices made an Order for the Removal of *Richard Stephens, Martha* his Wife, *Mary, Thomas, Elizabeth* and *Richard*, their four Children from *St. Maurice's* to *St. Mary Kallendar's* in *Winchester*: And, upon Appeal, the Sessions quashed that Order.

The Sessions state a special Case; viz. That *Richard Stephens*, the Father of *Richard Stephens* the Pauper, went into *St. Maurice's*, by a proper Certificate from *St. Mary Kallendar's*: The Son was born in *St. Maurice's*, under the Certificate; and lived there with his Father till he was bound Apprentice to *Stewart Mitchell* in *Kingsworthby*; where he served seven Years. But on the Part of *St. Maurice's* Parish, PAROL Evidence was given by the Master *Stewart Mitchell*, "that he himself came into *Kingsworthby* with a Certificate acknowledging him to be a Parishioner of *Micheldever*; and resided there, AS a Certificate-man from *Micheldever*, during the whole Time of the Apprenticeship: Which Certificate from *Micheldever* he delivered to one *Hide*, AN OFFICER of the Parish of *Kingsworthby*." But there was also PAROL Evidence given by one *Earl* the present Overseer of *Kingsworthby* (who was served with a *Subpœna duces tecum*) "That there was NOW no such Certificate to be found in that Parish; and that he had never seen or knew of any such; and that if there had been any * such, it was MISLAID."

* N. B. This Certificate, if there was any, must have been above 21 Years ago.

The Sessions adjudge that the Settlement was NOT in *St. Mary Kallendar's*; BECAUSE no Certificate in Writing was produced: The Words are—"Therefore this Court is of Opinion, that AS no Certificate in WRITING was produced, the Place of the last legal Settlement of the said *Richard Stephens* the Pauper, *Martha* his Wife, and their four Children, is not † in the Parish of *St. Mary Kallendar*."

† But they do not declare and adjudge where the Settlement is — N. B. They discharge the Order of two Justices in the first Part of this Order.

On Saturday the third of this Month, a Motion was made by Mr. Ford, to quash this Order of Sessions. The only Objection he made to it, was "That PAROL Evidence of Stewart Mitchell's Certificate from Micheldever to Kingsworthy was SUFFICIENT Evidence; and that it was not necessary to PRODUCE the Certificate." And then it follows, that if this Apprenticeship was served to a Certificate-man, he did not thereby gain a new Settlement in Kingsworthy; and consequently remained settled in St. Mary Kalendar by Virtue of the original Certificate from them to St. Maurice's. The Sessions have given such a wrong Reason for their Judgment, as plainly shews that they did not attend to the parol Evidence; but relied on the Want of producing a Certificate in Writing.

RULE to shew Cause.

On Saturday 17th Nov. 1750, Mr. Henley shewed Cause. He denied that there was any Evidence at all "that any Certificate from Micheldever to Kingsworthy ever existed or was ever delivered." Stewart Mitchell was no Judge of the Validity of a Certificate. And if there was one, it does not appear that it is lost. Therefore, as none was produced, the Sessions have rightly judged "that the Fact of there having been such a Certificate was not made out." And if it was not, then the Pauper gained a Settlement in Kingsworthy by serving an Apprenticeship there.

At another Day, 21st Nov. 1750, (to which it was adjourned,) the Counsel who argued now for the Parish of St. Mary Kalendar and for the Order of Sessions (Mr. Henley and Mr. Staniford,) argued that PAROL Evidence can not be given of a Certificate in Writing. The Act of 3 G. 2. c. 29. sect. 8. makes the Oath of one of the Witnesses, and the Certificate by the Justice "that such Oath was made" to be the legal Proof of a Certificate. And even admitting that parol Evidence MIGHT be given, yet there is no Evidence that there was such a Certificate, or that it is lost. Earl only testifies that he has never seen it: But it does not appear that any Search has been made for one.

By the Act of 8 & 9 W. 3. c. 30. it ought to be under the Hands &c, of the Churchwardens and Overseers, and attested &c, by two Justices of Peace; and it should have been delivered to one of the Churchwardens or Overseers of Kingsworthy: Whereas here this parol Evidence is only "That it was delivered to one Hide, an OFFICER of the Parish of Kingsworthy."

Q q

Therefore

Therefore the Settlement was in *Kingsworthy*: Consequently the Order of Sessions is right.

The Counsel for *St. Maurice's* and against the Order of Sessions, (Mr. Ford and Mr. Pratt) argued that the parol Evidence here given was sufficient, and was *all that was possible* for the Parish of *St. Maurice* to give: And that *Earl's* Evidence imported a Search to have been made in *Kingsworthy* for such a Certificate. And after such a Distance of Time as twenty-one Years, *omnia præsumuntur rite acta*.

The Residence under the Certificate during the whole Time of the Apprenticeship shews it to have been regular; and is like Possession under a Deed.

Lord Chief Justice LEE—The Sessions have admitted, and have stated the Evidence on both Sides; and conclude that as no Certificate has been produced, “the Place of last legal Settlement is not” in *St. Mary Kalendar's*” So that it appears they did receive all the Evidence that was given: And it does not appear that there was any Objection made to parol Evidence.

It is not now insisted upon, that this was conclusive Evidence to the Justices, “that there was a Certificate.” And if there was one, yet it might be an irregular Certificate. We had an Instance here of one, lately*, to *Bethlem*; which did not conclude the Parish giving it, as a proper Certificate from that Parish under the Certificate Act, so as to bind them in other Respects than that particular Purpose for which it was given.

Now the Justices at Sessions are so far from having determined “that parol Evidence ought not to be admitted,” that they have actually received all that was offered. Therefore I see no Reason to quash the Order of Sessions.

THE THREE OTHER JUDGES concurred in Opinion.

Per Cur. unanimously—

RULE DISCHARGED: And
Order of Sessions AFFIRMED.

* Hil. 1748. 22 G. 2. *Rex v. Inhabitants of St. Olave's Southwark*, ante, N° 99.

Hilary Term

24 Geo. 2. 1750.

Rex v. The Inhabitants of Wincaunton.

No. 107.

TWO Justices made an Order for the Removal of *John Forward* ^{Thursday 31st} and *Sarah* his Wife, and *Martha* and *Sarah* their two Chil- ^{Jan. 1750} dren, from *Crediton* in the County of *Devon* to *Wincaunton* in *Somersetshire*: And, upon Appeal, the Sessions confirmed that Order. Whereupon this Special Case is stated.—

John Forward was born in *Wincaunton*, where he lived with his Parents until his Age of seventeen; when, being informed that *Samuel Williams* of *CHARLTON HORETHORNE* wanted a stout Boy, he went and offered to serve him; and the said *Williams*, liking him, HIRED the Pauper to serve him in Husbandry, and agreed to give him Meat Drink Washing and Lodging and Cloaths when wanted; but NO PARTICULAR TIME was agreed on; and the Pauper apprehended his Master might turn him off, or he might have gone away from him, at their Pleasure: Nevertheless, there was no Agreement for that Purpose. That thereupon, the Pauper continued with and served the said *Williams* in *Charlton Horethorne* aforesaid for two Years and a Half: And, at the End of the first three Quarters of a Year, wanting Cloaths, his Master provided Cloaths for him; and so afterwards, when he had Occasion for Cloaths. That the Pauper afterwards removed into the said Parish of *Crediton*: But having gained no Settlement there, was removed, with his said Wife and Family, by Virtue of the said Order. This Court are of Opinion and do adjudge “that the said Pauper gained NO Settlement by such Service in “*Charlton Horethorne* aforesaid;” and do therefore ratify and confirm the said Order, &c.

On *Friday* 23^d *Nov.* last, a Motion was made by *Mr. Gapper*, to quash this Order.

The Question was, “Whether this be a Settlement within the “3 & 4 *W. & M. c. 11.*”

Q 9 2

To

* *Hankford*
was then a
Judge of the
Common
Pleas.

To prove that a GENERAL Hiring is a Hiring FOR A YEAR, *Bro. Abr. Title Labourer, pl. 20.* was cited:—Which mentions that by the Statute of *Labourers, 24 Ed. 3. c. 1. Quilibet potens in Corpore doit server.* And *Hankford* said “that every Infant of twelve Years, retained, ought to serve.*” And *pl. 23. per Hankford*—“*Si Jeo face Covenant oue un, de moi server, il viendra en mon Service pour un an ENTIER.*” And *1 Inst. 42. b.* “If a Man retain a Servant generally, without expressing any Time, the Law shall construe it to be of one Year: For that Retainer is according to Law.” *23 Ed. 3. c. 21. &c.*

The Act of 8 & 9 W. 3. c. 30. only requires a Service: The Hiring depends upon 3 & 4 W. & M. c. 11. Now here is an express Service stated. So that the only Question is upon the Hiring.

The modern Cases cited were *Crowland v. St. John Baptist in Peterborough, Viner*,—Title—*Settlement of the Poor*; where it was said “he served for a Year;” the Order was held good: “For the Law presumes he was HIRED for a Year.” And *Jessop and Missenden Parishes, Trin. 13 Ann.* where *Sarah Barnes* came as a hired Servant, and lived with her Father for a Year in a little Cottage at *Missenden*. The Father gave her 10s. a Year, and what else she could get: She was holden to be settled at *Missenden*. And *Rex v. Inhabitants of Putney, 13 to 15 G. 2.* These were cited to prove that a GENERAL Retainer is a Retainer FOR a Year.

Note—This Point was (in *Mich. Term 1741, 15 G. 2.*) taken for granted and undoubted in this last-cited Case, by Lord Chief Justice *Lee*, Mr. Justice *Page*, and Mr. Justice *Wright*; though the Case itself was never determined.

The Counsel who now shewed Cause argued that this was only a Hiring AT WILL: Though they admitted that the old Books do prove that a GENERAL Hiring is, upon the Statute of Labourers, a Hiring for a Year.

But yet the Circumstances of the Hiring may shew the INTENTION to be otherwise. And this Hiring seems, upon the Circumstances of it, to be only at the Will of each. The Rule is not to be taken so strictly and absolutely, as that it can not be otherwise: But only “that, *prima facie*, a general Hiring is a Hiring for a Year.”

Lord Chief Justice *LEE*—It is agreed “That a GENERAL Hiring is a Hiring for a Year,” according to *1 Inst. 42. b.*

Therefore

Therefore the only Question is "Whether the CIRCUMSTANCES of this Case shew an INTENTION to the Contrary."

The Apprehension of the Pauper is stated indeed to have been to the contrary: But it is also stated "that there was no Agreement for that Purpose."

His Lordship said he did not see any Circumstances to vary it from the general Rule, which has been and must be agreed.

THE THREE OTHER JUDGES were of the same Opinion.

Per Cur.

BOTH ORDERS QUASHED.

As to Hiring for 12 Years. *W. Post, Rex v. Inhabitants of Milwich, Trin. 1757, 30 & 31 G. 2. in my 4th Part of Reports, 371. Rex v. Inhabitants of Weyhill, Hil. 1760, ibidem, p. 928. And Rex v. Inhabitants of Berwick St. John, Easter Term 1760.*

Easter Term 24 Geo. 2. 1751.

No Determination on this Subject.

Trinity

Trinity Term

24 & 25 Geo. 2. 1751.

N^o 108.

Rex v. The Inhabitants of Ozleworth.

Saturday 22d
June 1748.

TWO Justices made an Order for the Removal of *William Hewett* from *Wotton under Edge* to *Ozleworth*, (both in *Gloucestershire* :) And the Sessions, upon Appeal, confirmed that Order.

Case—The Pauper, *William Hewett*, had gained a Settlement in *Ozleworth*; but, subsequent to it, agreed with *Thomas Palsor*, an Inhabitant legally settled in *Wotton under Edge*, Clothworker, to serve him in the said Business for three Years, at 3s. a Week for the first Year, 3s. 6d. a Week for the second Year, and 4s. a Week for the third Year. He was to work only twelve Hours in a Day, and to have one Penny for every Hour he should work above the twelve Hours: And that the said *Thomas Palsor* should retain 6d. a Week out of the above Wages, during the said three Years, by Way of a Deposit or Security for the said *William Hewett*'s performing his Agreement; but which said 6d. by the Week was to be paid to the said *William Hewett* at the End of the said Term, if he performed the said Agreement, or if the said T. P. should DISCHARGE him of the said Service BEFORE THE END of the said Term; but was to be kept by the said T. P. if the said W. H. QUITTED the said Service BEFORE THE END of the same Term. That the said T. P. was not to find or provide Meat Drink Washing or Lodging for the said W. H. during the said Term: And that it was UNDERSTOOD between the said T. P. and W. H. "that the said T. P. might turn the said W. H. OUT OF HIS SERVICE at any Time during the Term, paying to the said *William* the Sixpences before retained." That the said W. H. worked with the said T. P. under the said Agreement, for about six Months; and then, being ill, absented himself from the Service for about three Months; and then returned to, and was received by the said T. P. and continued to work for him

him under the said Agreement, *TILL the Time of his being removed* by the said Order of Justices, being for *about three Quarters of a Year* after the said Return to the said *Thomas Palsor*: And that, during the Time of his working with the said *T. P.* and during his Sickness, the said *William Hewett* lodged in the said *Parish of Wotton under Edge*; but not in the said *Thomas Palsor's House*.

On *Tuesday the 7th May* last, a Motion was made by *Mr. Bishop* to quash these Orders: Who insisted that this was a good Settlement in *Wotton under Edge*, upon the special Case above stated.

The Sessions could not, he said, or ought not to apprehend that the Absence of the Servant *during his Illness* could vitiate the Settlement: Especially, as the Master received him again, when it was over: In *Rex v. Inhabitants of Islip**, *P. 7 G. 1. B. R.* the Servant was absent, being sick, six Days; to see his sick Mother, four Days; and went away three Days before the End of the Year; and yet it was held a good Settlement. In *Rex v. Inhabitants of Eaton†*, *Tr. 8 & 9 G. 2. B. R.* three Weeks Absence of the Servant was held to be purged by the Master's receiving him again: And the Court declared against Nicety in construing these Settlements. In *Rex v. Inhabitants of Beccles§*, *P. 17 G. 2. B. R.* the Servant's working with other Persons, by Consent of the Master, did not vitiate his Settlement. And in *Rex v. Inhabitants of Goodnestone||*, *Tr. 18 & 19 G. 2.* the Servant went to the Herring Fishery three Weeks before the End of the Year, by Licence: Yet it was holden a good Service.

As to the LIBERTY of ending the Contract, on forfeiting the Sixpences, and what was understood between the Master and the Pauper about it—he mentioned the Case of *Rex v. Inhabitants of Wincaunton†*, in the last *Hilary Term*, where the Apprehension of the Pauper was holden to be quite immaterial.

As to his Lodging—He is stated to have lodged in the *Parish*: There was no Need that he should lodge in *Palsor's House*.

Here is an actual Hiring for three Years; and a Service under it for one Year and a Quarter. Therefore both the two Justices and the Sessions have judged wrong, in holding “that no Settlement was thereby gained.”

Besides (as *Mr. Ford*, who was on the same Side, observed) the two Justices removed him, whilst he was actually in his Master's Service.

The Counsel who now shewed Cause insisted on the Liberty of quitting, as vitiating the Settlement; alledging that the Hiring ought to be absolute and conclusive.

Lord:

Lord Chief Justice LEE—But how could the Justices remove him out of the Service? It appears that the Man was *actually* IN THE SERVICE, at the Time of the Removal.

Both HE and *Mr. Justice WRIGHT* thought the Orders must be quashed.

Mr. Justice WRIGHT observed that the Pauper had served a Year and a Quarter.

The two other Judges (*DENISON* and *FOSTER*) were both silent.

Per Cur.

RULE made ABSOLUTE to quash both Orders.

V. ante, pa. 48, and the Cases referred to, at the Bottom of that Page.

Michaelmas Term

25 Geo. 2. 1751.

Nº 109.

Rex v. The Inhabitants of Ilam.

Thursday 7th
Nov. 1751.

TWO Justices made an Order for the Removal of *Thomas Smith*, *Mary* his Wife, and *John* their Son from *Tutbury* to *Ilam*, (both in *Staffordshire*;) And, upon Appeal, the Sessions confirmed that Order.

The Case stated was only this—*Rowe Port* of the Parish of *Ilam*, Esq; hearing that the Pauper was a likely Boy to serve him as his Postilion, sent to the Pauper's Father, to have the Pauper upon Liking. AFTER the Pauper had served *Mr. Port* eight Weeks on Liking, *Mr. Port* hired him for a Year to COMMENCE from the BEGINNING of the said eight Weeks. He served *Mr. Port*, in the said Parish of
I
Ilam,

Ilam, INCLUDING the said eight Weeks, a Year and ten Days, and no longer.

On Wednesday 26th June last, a Motion was made by Mr. Gilbert, to quash these Orders: For that this retrospective Hiring is no Hiring FOR A YEAR, within 3 & 4 W. & M. c. 11. It ought to have commenced from the Time of the Hiring.

RULE to shew Cause.

Upon shewing Cause on Friday 25th of last Month, the following Cases were cited.—*Rex v. Inhabitants of Aynhoe**, M. 1727, 1 G. 2. B. R. where it was settled “that a Hiring for a Year and a Service for a Year acquire a Settlement, ALTHOUGH the Hiring and the Service are not under the SAME Contract.” In the Case between the Parishes of *Lidney* and *Stroude*†, the first Hiring was conditional “for a Quarter of a Year, upon Liking; and IF they did like each other, then to continue for a Year:” Yet it was holden a good Settlement; as they did like each other; and the Year’s Service was performed. In the Case between the Parishes of *New Windsor* and *Chepping Wycomb*‡, Hil. 8 G. 2. B. R. it was uncertain till the End of the Year, whether the Hiring would be for a Year; yet happening so in Event, it was holden good. The Maid was hired to go into Col. *Meyrick*’s Service a Month upon Liking, at 5*l.* a Year Wages; but was to go away on a Month’s Wages or Warning on either Side. In the Case between *Wandsworth* and *Putney*, M. 15 G. 2. a general Hiring and a conditional Hiring performed, were both allowed to be good, to acquire a Settlement§.

From which Cases it was argued, that this was good, as a GENERAL Hiring for a Year; and also as a conditional Hiring, completed by the EVENT.

And here was plainly a Service for a Year: And there is no Pre-
tence of any Fraud.

The Counsel for quashing the Orders (Mr. Ford, Mr. Gilbert, Mr. Henley, and Mr. Simpson) cited *Rex v. The Inhabitants of South Cerney**, Tr. 5 & 6 G. 2. where the Pauper was hired at a Statute-Fair the Wednesday after Michaelmas to Michaelmas following, and the Court would not depart from the Act; but held it to gain no Settlement, though the Custom of the Country was so. The Case between the Parishes of *Winford*† and *Chew Magna*, M. 22 G. 2. proves that Service alone will not do; unless the Hiring be as a Servant.

* 2 Lord Raym. 1511.

† V. ante, N^o 1.

‡ V. ante, N^o 7.

§ V. ante, pa. 300, in N^o 107. the Note upon this Case of *Rex v. Inhabitants of Putney*.

* V. Sess. Ca. Ed. 1750, Vol. 1. pa. 174, N^o 156.

† V. ante, N^o 98. *Rex v. Inhabitants of Winton*.

R r

Indeed

* 2 Lord
Raym. 1511.
† V. Cases of
Settlement,
N^o 107.
N^o 119, 120.
Foley, pa. 150.

Indeed if there be such a *Hiring*, the *Hiring* and *Service* shall be coupled together; as in the Case of *Aynhoe*.*

In P. 5 G. 2. between the Parishes of *West Woodhay* and *Coombe*†, a *Hiring* from the Statute, which was only two Days after *Michaelmas*, to the next *Michaelmas*, was holden not good.

So that this *Retrospect* will not do. Indeed if there had been a general Contract for a Year when he *first* came, it had been otherwise. But here he only came TO SEE IF HE SHOULD like and be liked. So that he was *not* a conditional Servant at the First: There was NO Contract AT ALL.

To these Cases it was replied by the Counsel who endeavoured to support the Orders, that only the last Case of *West Woodhay* and *Coombe*§, was applicable to the present: But in that, the ACTUAL Service did NOT COMMENCE till three Days after *Michaelmas*: Whereas here, the actual Service was CONCOMITANT with the *Hiring*.

THE COURT had some Doubt about the Validity of this *Hiring*; and therefore ordered it to stand for further Argument, by one single Counsel on each Side: And in the mean Time, they said, they would themselves look into the Cases which had been cited.

After it had now been accordingly again argued, by Sir Richard Lloyd, in Support of the Orders; and Mr. Henley, against them—

THE COURT held this Case to differ from all the former Cases.

The sole Question is “Whether here be a *Hiring* FOR A YEAR.” It is agreed that there *must* be a *Hiring for a Year*, and a *Service for a Year*, to gain a Settlement; and that a *Retrospect* will *not* do. Which latter is the Case here: For the Lad came upon *Liking*; and at that Time, there is nothing stated of a *Hiring*; nor till eight Weeks after, during which eight Weeks both Parties were at Liberty.

Mr. Justice FOSTER thought the Cases of *Lidney* and *Stroude*, and *Chepping Wycombe* and *New Windsor*, had carried the Matter as far as possible; and if they were new Questions he should doubt of those Resolutions: But both these were Hirings for a Year, previous to the Service; and the Conditions were performed.

Mr. Justice FOSTER observed also, that the *safest* Way is to adhere strictly to the Words of the Act of Parliament: For Refinements upon these Questions have produced Infinity of Questions and Difficulties.

THE COURT* held this to be *no* Settlement. Therefore
Per Cur.—

THE RULE must be made absolute for quashing the Orders.

BOTH ORDERS QUASHED.

* Mr. Justice Wright was not present, either now or on the last shewing Cause.

Rex v. The Inhabitants of West Shefford.

N^o 110.

TWO Justices made an Order for the Removal of Catharine Bird Widow, and Lawrence and Mary her Son and Daughter by John Bird her late Husband deceased, from West Shefford in Berkshire to Baydon in Wiltshire: And, upon Appeal, the Sessions quashed that Order. Friday 8th Nov. 1751.

The Case stated is, in Substance, thus—John Bird, late Husband of the said Catharine Bird and Father of the said Lawrence and Mary, being legally settled in Baydon, came by Certificate from Baydon to West Shefford: And, during the Time that he resided in West Shefford under such Certificate, he BECAME beneficially intitled to a Leasehold Estate of FOURTEEN POUNDS a Year, situate in West Shefford; which had been granted by the Trustees of the late Sir William Trumbull to the Father of the said John Bird and his Assigns for ninety-nine Years determinable on the Death of John Bird the Grandfather, the Wife of John Bird the Grandfather, and of this John Bird the Father. That the said John Bird the Husband of the said Catharine the Pauper and Father of the said Lawrence and Mary, being the last surviving Life in the said Lease mentioned, entered upon the said Estate on the 17th of November 1750, and was possessed thereof; and also resided thereon, from the Time he so entered to the Day of his Death, which happened on the 15th Day of December 1750, being TWENTY-EIGHT DAYS and no more. That upon the Death of the said John Bird the Father, (his being the last surviving Life as aforesaid) the Estate under the said Lease determined; and the said Wife and Children of the said John Bird had no further Interest whatever in the said Leasehold Estate. And that they or any of them have not gained any Settlement, other than what they derive under the said John Bird the Husband of the said Catharine and Father of the said Lawrence and Mary, by Virtue of the said Leasehold Estate as aforesaid in the said Parish of West Shefford.

R r 2

On

On Monday 17th of June last, a Motion was made by Mr. Ford, to quash this Order of Sessions.

His Objection to it was, that though the Man when living was *not removable* (as he acknowledged) FROM this Estate of his own; yet, as he had never *resided forty Days upon it*, neither he if he were now living, nor his Family were removable TO it: For by the Act of 13 & 14 C. 2. c. 12. *sect. 1.* the Removal can only be to the Place where the Pauper *has RESIDED by the SPACE of FORTY Days.*

RULE to shew Cause.

The Counsel who shewed Cause on the 31st of October last, made this short Question "Whether a *beneficial* Interest is not sufficient "to gain a Settlement, WITHOUT a *forty Days Residence*:" And they argued that it *was* sufficient.

His being a *Certificate-man* did not preclude him from THUS gaining a Settlement. The Case between the Parishes of *Burcleer and East Woodhey**, P. 5 G. 2. is a Determination "that a *Certificate-man* shall not be precluded from taking Advantage of a *beneficial Interest accruing to him.*" On 43 Eliz. c. 2. no particular Time of Residence is limited.

* 1 Sir John
Strange 163.

The Question concerning *forty Days* arises only upon 13 & 14 C. 2. c. 12. which fixes the *Complaint* to be made within forty Days after coming to settle in a Tenement under 10*l.* a Year.

[It does so: *V. sect. 1.* But the same Section directs the Removal to be to the Parish where the Pauper was last legally settled for the Space of *forty Days.*]

This Man had resided a *Month* in the Parish, (*viz.* twenty-eight Days,) taking it even on 43 Eliz. And in the Case of *Wesson Rivers* and *St. Peter's Marlborough*, 2 Salk. 493, Lord Chief Justice Holt held "that before 13 & 14 C. 2. c. 12. was made, a *Month's* "Residence in a Parish made the Party an *Inhabitant.*" And the present Case is not within either the Words or Meaning of the Statute of 13 & 14 C. 2. c. 12. nor within any Determination upon it.

The Words relate to Persons going about as *Vagabonds*, from Parish to Parish: Whereas this Man was an *Owner of Land* under a beneficial Lease.

The Meaning of this Act of 13 & 14 C. 2. appears from the subsequent Acts; particularly the 1 J. 2. c. 17. and 3 & 4 W. & M. c. 11.

The

The 17. c. 17. *sect.* 3. requires Notice in Writing to be delivered by the Person to the Parish-Officers, of his coming into the Parish; and directs that the forty Days be computed only from the *Delivery* of such Notice: And the 3 & 4 W. & M. c. 11. s. 3. directs them to be computed from the *Publication* of such Notice in the Church. The *Reason of the Notice* is that the Parish may, within the forty Days, make *Inquiry* about the Pauper, in order to remove him. But here, it is agreed, that he was ALWAYS *irremovable*. Consequently, this Notice can not concern him, who never could be removed.

Neither is this Case within any of the *Determinations* upon 13 & 14 G. 2. c. 12.

In the Case of *Ryssip and Harrow*, 8 W. 3. 2 Salk. 524. pl. 2. per Holt Chief Justice, "LIVING in a Parish where one has Land of his own, gains a Settlement without Notice: For the Act of Parliament never meant to banish Men from the Enjoyment of their own Lands." No limited Time of Living is fixed there: It is general—"living in a Parish." It seems as if that Case was *Freehold*: But in *M. 12 Ann.* between the Parishes of *Harrow and Edgeware**, it was extended to *Copyhold*. And it has been extended to the Husband of an ADMINISTRATRIX of a *Leasehold*: § *M. 4 G. 2.* between the Parishes of *Mursley and Grandborough*; the Man was only intitled as Husband of an Administratrix in Trust, and in Right of his Wife. In the Case of *Sundriss and Hever*†, Tr. 7 & 8 G. 2. a beneficial Lease of small Value, in the Hands of an Executor and Devisee was holden not to be within the Act. In the Case of *Stanfield*‡, P. 16 G. 2. an Assignment of a Term of small Value renders irremovable.

Persons having Interests of *Property* are not within the Act: Nor are they obliged to give Notice of their coming into a Parish.

The Counsel for *West Shefford* argued that it does not clearly appear "that this Estate was the Pauper's own Estate." Mere Possession can not give a Settlement; nor a bare Descent: For, at that Rate, a Man might be settled in many Parishes at one Time, if many Tenements should descend to him together.

The Question however, if it be taken "that it was his own Estate," is "Whether a Man or his Family can be removed to what was once his own Settlement; after his Interest in it is expired; and which Interest was DETERMINED BEFORE he had resided upon it forty Days."

They

* Fortescue's Reports 310. and Foley's Poor Laws 294.

§ V. Sessions Cases, Edit. 1750, Vol. 1. p. 133. No 122. and 1 Sir John Strange 97.

† V. ante, No. 4.

‡ V. ante No 72. p. 209.

They argued in the Negative. And they *denied it to be true* (though it has often been asserted) "that being *irremovable*, and being *settled*, are CONVERTIBLE Terms."

Before the 13 & 14 C. 2. c. 12. Paupers could not be sent to any particular Parish. This Act (*Sett. 1.*) gives the Justices Power to send them to the Parish where they were last legally settled for forty Days.

But a Man can't be said to be settled forty Days, till he has REMAINED forty Days. And so it has been always understood, when the Matter has been under Consideration.

* *V. ante*,
N^o 42.

In Tr. 13 G. 2. between the Parishes of *St. Cleere** and *St. Nyotts* in Cornwall, it was so agreed by the Court, "That a Man can not be sent to the Place where he had a beneficial Interest, though even a Freehold, UNLESS he had resided forty Days upon it."

§ *V. ante*,
N^o 40.

In the Case of § *Sowton* and *Sydbury*, H. 12 G. 2. the only Question was "Whether the forty Days should be *successive*?" There was no Doubt but that forty Days Residence was necessary. And in M. 11 G. 1. *Rex v. The Inhabitants of Wyley**—There also the Residence for forty Days was considered as the Point whereupon the Settlement turned. [*V. Sir J. S. 609. accord.*]

|| *V. ante*,
pa. 128.

* *V. i Sir J. Strange* 608,
Ashvittle and
Wyley.

So it was also, in *Rex v. Inhabitants of Hasfield* §, P. 13 G. 2.

§ *V. ante*, N^o
49, pa. 148.

Therefore this Man gained no Settlement, unless he had resided forty Days: Whereas, in Fact, he resided only twenty-eight Days.

THE COURT thought pretty clearly, that forty Days Residence was necessary to gain a Settlement. They ordered it, however, to stand over. And upon it's being mentioned again, now,

Lord C. Just. LEE said he had looked a little into it: And all the Cases he could find, agreed in holding a FORTY Days Residence to be necessary, in order to found an Order of Removal to a Place.

Mr. Justice DENISON—So I think. And I look upon this to have been settled, since the Case of *Mursey* and *Grandborough* ||: In which it was holden by Lord Chief Justice Pratt, Mr. Justice Eyre, and Mr. Justice Fortescue, that "any Person who has an Estate of Freehold, Copyhold, or for Years, by Act of Law (as Descent, Marriage, Executor, Administrator, or Purchase) may dwell up-

|| M. 4 G. 2. v. *Sessions Cases*, Edit. 1750. Vol. 1. pa. 133. N^o 122. and 1 Sir John Strange 97. both S. C. but not so full as a MS. Report in my own Hands; nor indeed at all coming up to the present Point in Question: Which mine does, and agrees exactly with the Representation of the Opinion of the Court here given.

" on it as his own; and is *not* removable; and gains a Settlement,
 " IF he continues forty Days; though under 10*l.* per Annum: But
 " he MUST ABIDE forty Days, in order to gain a Settlement. And
 " Notice is not necessary; because he is not removable from it.
 " But *Powys* held *contra*, as to a Term for Years under 10*l.* per
 " Annum Value."

Mr. Justice FOSTER—I am of the same Opinion. The Case of *Weston Rivers* in 2 Salk. 493. can be no Authority, to be sure: The Month's Abode in a Parish relates to Assessments, which are made but once a Month.

Per Cur:—

Order of two Justices CONFIRMED:
 Order of Sessions QUASHED.

Rex v. The Inhabitants of Marden.

N.^o 111.

UPON Saturday the 15th of June last a Motion was made by Mr. Jennings, to quash an Order of Sessions confirming an Order of two Justices for the Removal of *Thomas Newport*, *Mary* his Wife, and *Jane* and *George* their two Children, from *Barham* to *Marden*, both in *Kent*. Saturday 23d
Nov. 1751.

The Substance of the Special Case (wherein many particular Circumstances were stated) was, That the said *Thomas Newport* and one *Joseph Dives* JOINTLY hired a House and Land at *Marden*, for a Year, at 16*l.* per Annum (which HAD BEEN rented at twenty POUNDS) and JOINTLY occupied the House and tilled the Land for the said one Year; and at their JOINT Expence tilled and sowed the Land; and JOINTLY paid the Rent, i. e. each the like Sum.

In Support of this Motion, a Case was cited from a MS. Note of a respectable Gentleman taken at *Durham* Affizes, 6th August 1733, between the Inhabitants of *Croft* and the Inhabitants of *Gainford*;—which was a joint Taking of 14*l.* per Annum, each paying separately; the Landlord not caring to let to either singly. And the two Judges, (*Reeve* and Lord Chief Justice *Eyre*) to whom it was referred, held it no Settlement; because the Statute requires the Person's taking a Tenement of 10*l.* per Annum Value: Whereas this Practice of calling in a Partner in the Taking, would, if admitted equivalent to a sole Taking, evade and frustrate the Statute.

RULE

RULE to shew Cause.

Mr. *Hume Campbell* and Mr. *Knowler*, the Counsel who now shewed Cause, urged 1st, That EACH was liable for the WHOLE Rent. 2dly, That the true Rule to go by, is the VALUE of the Tenement; not the RESERVED Rent: (Which Value is not here stated.)

But even taking it as a Tenement of SIXTEEN POUNDS per Annum Value; yet the Pauper was legally the Tenant of the WHOLE: Both being liable to the Landlord, for the Rent. It is only taking a further Security for Payment of the Rent: Which shall not prevent gaining a Settlement. In Tr. 10 & 11 G. 2, between the Inhabitants of **Butley* and *Benball*, the Tenement was 14l. per Annum: And the Landlord took a Security also for the Rent: Yet it was holden a good Settlement.

• V. ante,
N^o 33.

The very Words of the Statute of 13 & 14 C. 2. c. 12. express the Case of a joint Taking. For they are—"Any Person or Persons coming to settle in a Tenement under 10l. per Annum Value." And this Tenement has been let at sixteen or twenty Pounds per Annum. So that this is expressly within the Words of that Statute.

Suppose the Rent had been 20l. per Annum Value;—no Doubt it had gained a Settlement to both.

It may indeed be objected, "that at this Rate, twenty People might be settled in one Tenement of 10l. per Annum."

But such a Transaction might be set aside and relieved against, under the Head of *Fraud*.

On the other Side, it was argued that this Case certainly is not within the Intention of the Act: For, as to the plural Word "Persons," it must be understood *reddendo singula singulis*; and never could be meant to give a Settlement to an indefinite Number of People, for hiring one single Tenement of 10l. per Annum.

As to each being Tenant of the whole—No Execution could be levied upon the whole, for the Debt of one only; nor could either charge or dispose of more than one Moiety: And the same might be asserted of the Stock upon the Farm. So that the Credit and Ability of this Man was only proportionable to the MOIETY of the Taking.

In the Case of *Butley* and *Benball*,—where the Landlord required and took a joint Security; the Tenant's visible Credit was not thereby affected: He had the Credit of the Tenement, as to every Body but the Landlord; and stocked it; and used it. This Case is quite otherwise.

As to *Value*—The HAVING BEEN *once* let at 20*l.* proves nothing. The *present* Rent, not the *past*, is the true Test of the VALUE of the Tenement.

This Practice would evade the End and Intention of the Act of Parliament, which meant “that no one should thus gain a Settlement, “whose *Credit and Ability* were not equal to the hiring a Tenement “of the Value of ten Pounds *per Annum*.”

Lord Chief Justice LEE—UPON THIS ORDER, either the Value of the Tenement hired by the Pauper is to be taken as *under* 20*l.* (*viz.* 16*l.* *per Annum* only;) or else, *no* Value of it is stated at all.

Now taking it as a Tenement of 16*l.* *per Annum* Value in the *whole*, (for so I must take it;)—The Meaning of the Word “*Per-sons*,” in the Act of Parliament of 13 & 14 C. 2. c. 12. is only to include those Persons who *make Part of the FAMILY of the Inhabitant* who is the Renter or Taker of the Tenement; but can never mean to extend to an *indefinite Number* of Persons *joining together*, to rent it.

Mr. Justice DENISON thought it an exceeding plain Case.

The Act of 13 & 14 C. 2. never intended that more than ONE Person should gain a Settlement, by renting a Tenement of 10*l.* *per Annum* Value.

And whatever may be the Case, with Regard to the REMEDY against the Occupiers of such Land so *jointly* taken by two Persons; yet this Act of Parliament considers only the RIGHT: Which, clearly, is *only* to HALF.

Mr. Justice FOSTER held it to depend upon the *real Value* of the *Right and Interest* in the Land: Which in this Case is but HALF; and that half does *not* amount to the Value of 10*l.* *per Annum*.

THEY ALL agreed with the Opinion of the Judges upon the Northern Circuit, in the Case of *Croft and Gainford*, “That this is “not sufficient to make a Settlement.” That was this very Case: And both those Judges were very knowing in the Affair of Settlements.

Per Cur. unanimously—

Both Orders QUASHED.

Hilary Term

25 Geo. 2. 1752.

N^o 112.

Rex v. The Inhabitants of Buckingham.

Thursday 6th
Feb. 1752.

ON Tuesday 28th of last Month, Mr. Ford moved to quash an Order of Sessions vacating an Order of two Justices; which Order of two Justices removed John Langley, Mary his Wife and Elizabeth their Daughter, from Buckingham to Maid's Moreton in Buckinghamshire.

The Short of the Case was—That Valentine Langley, Father of John, came with a Certificate, with his Family, from Maid's Moreton, to settle in Buckingham; and, during his Residence there his Son John (the present Pauper) was hired and served a full Year in Buckingham: Which Hiring and Service the Justices at Sessions held to have gained him a Settlement in Buckingham; and therefore they quashed the original Order which removed him and his Family to Maid's Moreton.

HIS OBJECTION was, That neither a Certificate-person himself, nor any of his Family could gain a Settlement in the Parish where they resided under a Certificate, UNLESS by ONE of these TWO Methods, viz. "Hiring a Tenement of 10l. per Annum Value;" or, "Executing some annual Office in the Parish;" as is expressly declared and enacted by the Act of Parliament.

LEE Lord Chief Justice was absent.

THE THREE JUDGES were clearly of the same Opinion; but said they must hear the other Side: And therefore gave him a

RULE to shew Cause.

The Recorder of London was now to have shewn Cause.—But he said the Adjudications were so * many and so * strong against him, that he would not attempt it.

* V. ante,
N^o 65, N^o
88, N^o 92.

Therefore per Cur.

Order of Sessions QUASHED: And
Order of two Justices AFFIRMED.

Rex

Rex v. The Inhabitants of Lockerly.

No. 113.

TWO Justices made an Order for the Removal of *Martha Edwards* the Widow of *Richard Edwards* deceased, and his five Children; *Jane, William, Ann, Benjamin* and *Martha*, from *Lockerly* to *Shirefield English*, both in the County of *Southampton*: Which Order the Sessions, on Appeal, quashed upon the Merits.

Monday 10th
Feb. 1752.

Special Case—The said *Richard Edwards*, his Wife, and the said five Children, were settled in *Shirefield English*; but afterwards removed into *Lockerly*, and there entered into Articles of Agreement with one *John Mersh*, who then occupied a Messuage Farm and Lands in *Lockerly*: Which said Articles are stated verbatim in the Order of Sessions, and are in Substance as follows—

1st, *Mersh* covenants with *Edwards* (therein stiled Dairy-man) to let and demise to him his Executors Administrators and Assigns, and that they may peaceably possess and enjoy, a Dairy consisting of sixteen Cows, with the Messuage or Tenement and Dwelling-house, and Feeding for the said Cows on twenty-one Acres of Clover Ground, and thirteen Acres of Meadow Land, with the After-leaze of a Mead: All which are situate in *Lockerly*, and are Part of *Canefield* Farm in the Occupation of the said *Mersh*; together also with the Run of the Backside or Yard belonging to the said Messuage or Tenement and the Arshes belonging to the said Farm, for the Feeding of Pigs; and also the Run of one Horse, with the Cows aforesaid; from the 2d of *February* next ensuing the Date, for one Year.

Also that *Mersh* shall, during the Term, allow to *Edwards* all the Sherl Wheat arising from the Corn growing on the Farm; and also provide for the Use of the Cattle (when wanted) five Tons of Hay; and for the same Feed of the Cattle, cause ten Acres of the Clover Ground and thirteen Acres of the Meadow to be laid up at *Candlemas-day*, and the other eleven Acres of the Clover at *Lady-day*; and also put the Messuage or Tenement and Dwelling-house and Premises into Repair; and fetch the Goods, Necessaries, and Fuel of *Edwards* home to the said Messuage or Tenement and Dwelling-house. And if the said Cows shall not be delivered of their Calves by the 1st of *May* following, *Mersh* shall deduct and allow out of the Rent reserved 2s. per Week for every Cow not so delivered, until she shall be delivered; and also what may be reasonable, for every Calf wanting to each Cow.

And lastly, *Edwards* covenants to pay *Mersh*, for and in Consideration of the Premises, 3*l.* 5*s.* for every such Cow as aforesaid delivered to his Use and Possession as aforesaid, payable Quarterly; except as above-mentioned.

That in Pursuance thereof, *Edwards* entered on and occupied the said Dairy and Premises, and lived in the said Messuage or Tenement and Dwelling-house and Premises, till his Death; which happened about the 7th of *October*. And that the Cows were fed in the Lands mentioned in the Articles: Part whereof was also fed at some Time in the said Year, to wit, during the Time the Cows were foddered in the Yards belonging to the Premises, during some Part of the said Winter Season, with the Sheep of *Mersh*: But the thirteen Acres of Meadow were never fed but by the said Cows.

That after the Death of *Edwards*, the said *Martha* his Widow continued in the Occupation of the Premises, and held the same to the End of the Year, pursuant to the Articles. And that the said Messuage or Tenement and Dwelling-house, DISTINCT from the Dairy and the Rest of the Premises in the said Articles mentioned, were of the YEARLY VALUE OF TWENTY-FIVE POUNDS and no more: And that the Rest of the Premises were of the annual Value of 50*l.* and upwards. And that neither the said *Richard Edwards*, nor the said *Martha* his Wife, nor the said Children, did any other Act than as aforesaid, to gain a Settlement.

On *Saturday* the 25th of last Month, a Motion was made by Mr. *Hume Campbell*, to quash this Order of Sessions, and affirm the original Order. It was urged, that the Articles of Agreement, and what happened in Pursuance of them, was not sufficient to gain a Settlement to the Paupers in *Lockerly*.

He said, the Case between the Inhabitants of *Minchin Hampton* and *Bisley*, Tr. 3 & 4 G. 2. B. R. is the nearest Case to this. It went off upon another Point*: But it was there holden "that the Feeding of Land did not gain a Settlement."

RULE to shew Cause.

The Counsel who now shewed Cause, insisted that this was a TENEMENT under the Meaning and Intention of 13 & 14 C. 2. c. 12. And they argued both from the Preamble of the Act; and also from the liberal Construction that has been always made upon it, in Favour

* It was for want of an Adjudication. See this Case in *Sessions Cases*, Edit. 1750, Vol. 2. pa. 92. N^o 93. and pa. 163. N^o 132. and Sir *John Strange*, pa. 874. extremely Short. I have also a MS. Note of it, taken myself.

of Settlements. To prove that this Statute has been liberally construed, they cited the Case of *Rex v. The Inhabitants of Sundrish**; * *V. ante*, No 4. pa. 7. where Lord *Hardwicke* gave it a liberal Construction, in determining that a Man could not be removed from his *own*, though a Leasehold of small Value.

A TENEMENT is every Thing that is holden. 1 *Inst.* 4. b. 6 & 19: Where Profits *a prendre* are considered as *Tenements*. And this is a Profit *a prendre*, CONNECTED with an INTEREST in the LAND.

As to the Case of *Minchin Hampton* and *Bisley*—It was never determined on *that* Point. Besides, the Taking was only from *Michaelmas* to *Candlemas*. It was not, nor could be laid down “that taking the Pasturage of Land for a *Twelvemonth* would not “make a Settlement.”

Though this Under-Lessee has only the Herbage, he may bring an Action, or distrain. *Dyer* 285. b. The Grantee or Patentee of the King *de herbagio forestæ* may maintain a *Clausum fregit*, or distrain Cattle Damage-feasant upon the Land.

Tithe is a *Tenement*; though it be no Ownership of the Soil.

If it be objected “That by this Method, *two Settlements* might “be gained by Virtue of the *same Premises*; one, by the original “Tenant; the other, by such his Lessee;”—the Answer is—So it may; provided the original Tenant leaves himself *above* the Value of 10*l. per Annum*. If a Property is *capable of being divided out*, (as for Instance, the Orchard itself, and also the Pasturage of an Orchard,) no Doubt if the Value of *each* Lessee was 10*l. per Annum*, it would gain a *Settlement to each*: For there is no Sort of Fraud in this.

On the Contrary, it was argued that this is *not a Lease of the LAND*; but a mere CONTRACT for the MILK of ANOTHER Man's Cows. The POSSESSION even of the Cows is NOT to be delivered to *Edwards*. And the *Recompence* arises in Proportion to the Cows which *shall CALVE*. The Rest of the Agreement is only *how* the Grantor shall FEED his Cows, in order to make the more or better Milk; and about the Running of the Grantee's Horse and Pigs.

So that this is *nothing like the HIRING of a Dairy, or Dairy-Farm*: Nor is a Profit *a prendre out of Lands*. Renting the Apples in an Orchard for a Year would not gain a Settlement. Therefore this is

† My Note of it says that the Orders were quashed upon another Exception.

|| My Note is—“And the same Year took, in the said Parish of *Bisley*, the Pasture of a Piece of Land, from *All Saints Day* till *Candlemas* following, and paid 12*s.* for the same; “(the said Piece of Land being of the yearly Value of 6*l.*)”

NOT a TENEMENT within the Act of Parliament: It is a Profit FROM the CATTLE: Not FROM the LAND.

N. B. All the Counsel agreed it to be a *new* Case, hitherto undetermined;

And the only Question to be "Whether this was a TENEMENT
" within 13 & 14 C. 2. c. 12. sect. 1."

Lord Chief Justice LEE was absent.

Mr. Justice WRIGHT took Notice that the Words "*let* and "*demise*" were indeed used; and so also was the Word "*Dairy*:" But the "*Dairy*" is immediately after explained to mean "*sixteen Cows*." The LAND seems to have *remained to Mersb*: For he was to lay it up, at such a Time.

The only Question is "Whether this can be said to be a TENEMENT, under 13 & 14 C. 2. c. 12."

NOW a TENEMENT *must* LIE IN TENURE; and *must* relate to LAND. Whereas this Contract *relates to the Cows*. The PASTURE of the GROUND, generally, is *not let*; but only the Feeding of *sixteen Cows*: He could not feed *other* Cattle upon it. The Value of this Meadow is not stated.

It seems to me to be only an Agreement for the *Use of the Cows*, and the Feeding of THEM: And it is merely personal. Here is no *Interest in the LAND* that passes, or was intended to pass.

He thought it a very clear Case.

The Case of *Minchin Hampton* was a different Case; and was not determined upon the Point of renting the Pasture of the Land; but quashed for want of an *Adjudication*. (However, he said that * IF that Case was an Agreement "*for the PASTURE* only of the Land," he should doubt of it.)

Therefore the Order of Sessions ought to be quashed; and the original Order confirmed.

Mr. Justice DENISON and Mr. Justice FOSTER (LEE Chief Justice absent) were clearly of Opinion that this Agreement was merely for a *personal* Thing, the *Use of the Cows*; and has nothing to do with the *Land*. Consequently, it can never come within the Intention of the Word "*Tenement*;" upon which a Man is to be settled.

Per Cur. unanimously—

Order of Sessions QUASHED:

Original Order AFFIRMED.

* See 1 Sir John Strange 874. And I have looked into the Order in that Case in *Minchin Hampton*, and the Words are—"And the same Year, took, in the said Parish of *Bisley*, the PASTURE of a Piece of Land, from *All Saints Day* till *Candlemas* following."

 The Editor of the *Sessions Cases* 1750 has been very Careless in relation to this Case of *Minchin Hampton*: Which he has given in two different Parts of his 2d Volume; but has very improperly transposed them. In Page 163, he has reported the Motion of *Easter Term* 3 G. 2. when Mr. *Steevens's* first Objection was over-ruled. In pa. 92. he had before reported the subsequent Objection taken by Mr. *Steevens* in the following Term, *Trin.* 3 & 4 G. 2: Which was an Objection to the original Order for Want of an Adjudication; upon which Objection, both Orders were quashed. In Truth, he does not seem to perceive that they are different Branches of the same Case: Nor has he given them the same Name.

Easter Term 25 Geo. 2. 1752.

No Determination of this Sort.

Trinity Term 25 & 26 Geo. 2. 1752.

Nor in this Term.

Michaelmas Term 26 G. 2. 1752.

Nor in this Term.

Hilary Term 26 Geo. 2. 1753.

Nor in this Term.

Easter Term

26 Geo. 2. 1753.

N^o 114.

Rex v. Inhabitants of Eakring.

Friday 18th
June 1753.

TWO Justices made an Order for the Removal of *George Witworth* from *Eakring* to *Selson*: And, upon an Appeal, the Sessions discharged that Order.

Special Case—*George Witworth*, a poor Child of *Eakring*, and put out by the proper Officers, by Indentures regularly executed, and allowed by two Justices of Peace, to *Richard Tomlinson* of *Eakring*, to serve him as a PARISH APPRENTICE TILL he should accomplish his AGE OF TWENTY Years, served his Master under these Indentures, for several Years, at *Eakring*, About three Years before he attained twenty Years of Age, he ran away from his Master; and loitered, for some Time, about the Country. In June 1749, *Tomlinson*, the Master, died: And at *Martinmas* after, the said *Witworth* hired himself as a Servant to *William Flint* of *Selson* for a Year, and served him that Year at *Selson*; and at *Martinmas* 1750, hired himself for another Year, and served that Year also with the said *William Flint* at *Selson*; and received all his Wages, to his own Use, the EXECUTORS of *Tomlinson* taking NO NOTICE of him: But the said *George Witworth* did NOT attain his Age of TWENTY Years, till January 1750. And the Sessions being of Opinion “that the said G. W. did NOT, by Virtue of such Hiring “and Service at *Selson* under the Circumstances aforesaid, gain a Settlement in the said Parish of *Selson*,” they reverse and discharge the original Order.

Upon Friday the 18th of last Month a Motion was made by Mr. *Taylor White*, to quash this Order of Sessions: For that after the Master's Death, the Apprentice was at Liberty to hire himself; and as he was hired for a Year and served a Year in *Selson*, his legal Settlement was there. “Apprenticeship is a PERSONAL Trust between “the Master and Servant; and is DETERMINED by the DEATH of

"EITHER *Master or Apprentice.*" Eyre says this, in 1 Salk. 66. *Rex v. Peck, Mich. 10 W. 3.*

Mr. *Wilmot* was now to have shewn Cause against quashing the Order of Sessions: But he candidly owned that he *could NOT defend it.*

He then objected to the *original* Order. To *this* Order he made two Objections—

1st, That the PARISH of *Eakring* is at first mentioned in it; and then it goes on—"And has lately intruded himself into *your said TOWN of Eakring.*" So that it is uncertain whether *Eakring* be a *Town*, or a *Parish*; which are quite different Things.

In Answer to this Objection, Sir *John Otway's* Case, 2 Vent. 31. was cited; where a Fine and Recovery of Lands in *Ribton* was holden to serve for Land which lay in the Parish, but out of the Vill of *Ribton*.

Wilmot replied that this Case was not to the present Purpose: For the Judges there went upon the Foundation "That common Recoveries were not to be overthrown by nice Constructions &c."

2d Objection to the original Order—The Pauper was only alledged to be likely to become *chargeable* THERE. Now "chargeable THERE," does not alledge that the Pauper was "likely to become chargeable to the Parish:" Which it is necessary that the Order should do.

(The Chief Justice being gone—)

THE THREE JUDGES held the first Objection to be over nice; and over-ruled it. And

Mr. Justice DENISON and Mr. Justice FOSTER thought the same, concerning the second Objection: Though Mr. Justice WRIGHT took it that the Word "*there*" did not necessarily import that the Pauper was likely to become so TO the PARISH.

But *per Cur.*—

Order of Sessions QUASHED:

Original Order AFFIRMED.

Trinity Term

26 & 27 Geo. 2. 1753.

N^o 115.

Rex v. Inhabitants of Hanbury.

Thursday 28th
June 1753.

TWO Justices made an Order for the Removal of *Richard Allen* and *Anne* his Wife from *Hanbury* in *Worcestershire* to *Tardebigg* in *Warwickshire*: And, upon an Appeal, the Sessions quashed that Order.

Case.—The Pauper was hired for a Year, from *Michaelmas* to *Michaelmas*: He came THREE Days after the former *Michaelmas*; and stayed ONE Day after the latter; and was absent, at different Times near a FORTNIGHT, for which Absence 6s. 6d. were abated in his Wages. This Service was in *Tardebigg*. From thence, he went to *Hanbury*; where he was hired for a Year, and served three Quarters; and then married to a Woman with Child. Of this, his Master complained to a Justice of Peace.—The Justice thought the Matter complained of to be a sufficient Cause for the Pauper's being discharged; AND ALLOWED of his Discharge; but made no Order IN WRITING touching the Matter. The Master thereupon discharged him, against the Pauper's Consent.

Upon Tuesday 14th of Nov. last, a Motion was made by Mr. *Ingram*, to quash the Order of Sessions: And a Rule was made to shew Cause.

On shewing Cause on Monday 28th of the same Month (of *Novem.*) Mr. *Bathurst*, for the Inhabitants of *Tardebigg*, argued that the Settlement was in *Hanbury*; at least, NOT in *Tardebigg*.

To prove "that it was no Settlement in *Tardebigg*, he cited the following Cases.

* 1 Sir John
Strange 423.

*P. 7 G. 1. B. R. Rex v. Inhabitants of Islip** was an Absence of four Days to see a sick Mother; and six Days, sick; and going away three Days before the End of the Year, having asked Leave, and for a reasonable Cause. All this indeed did not vitiate the Settlement: For the Servant continued in the Service, in Point of Law; though he actually left it three Days before his Time expired.

† V. ante,
N^o 20.

But in *M. 9 G. 2. B. R. Rex v. Inhabitants of Castlechurch* there was a Hiring for a Year; and the Service was quitted, by Consent

sent of the Master, twelve Days before the End of the Year: And it was holden to be no Settlement.

And *Rex v. Inhabitants of Newton* §, M. 14 G. 2. shews that it ^{§ V. ante,} must be a complete Year. ^{Nº 55.}

As to the Settlement in *Hanbury*—The Justice COULD NOT discharge the Servant against his Consent: For it appears by, and was agreed in *Bro. Abr. Title Laborers, pl. 27*: “That the Master can not discharge his Servant within the Time &c, UNLESS he agrees to it; no more than the Servant can depart, without the Agreement of his Master.”

The Act of Parliament of 5 *Eliz. c. 4. sect. 5.* does not make this Marrying during his Service to be a reasonable and sufficient Cause of Discharge; such as a Justice of Peace may allow to be so, for putting away a Servant without his own Consent. And in the Case between the Parishes of *Farringdon* and *Wilcot*, P. 2 Ann. 2. Salk. 529. A Servant who marries during his Service may serve out his Time: And if he does, it shall gain a Settlement, by the Opinion of *Holt* and *Gould*, against *Powell*.

Therefore he must be considered, in Point of Law, As having continued in the Service to the End of the Year: For the Discharge by the Justice was absolutely void.

Lord Chief Justice LEE said the great Question is upon the CAUSE of Discharge; “Whether that be sufficient.” But as the Cause and Manner of Discharge were a new Point, he thought it not fit for the last Day of a Term.

ADJOURNED.

Mr. Bathurst now proceeded, and argued—1st, That no Settlement was gained in *Tardebigg*; because he did not serve there a whole Year. Absence either at the Beginning of the Year or just before the End of it will vitiate the Service. 2dly, That his Marriage is no Dissolution of the Contract, in *Hanbury*. To which Point, he cited 2 H. 4. 13. b. Case 3. A Man may marry my Servant, a Feme Sole; but can not take her out of my Service*. He cited also *Fitz-Herbert's Abridgement*, Title Barre, pl. 214.

In the Act of 3 & 4 W. & M. c. 11. sect. 7. the Word “UN-married” only relates to the Time of the HIRING. And so it was held by *Holt* and *Gould*, against *Powell*, in the Case between the Parishes of *Farringdon* and *Wilcot*.

* The Book says—“jusques que il l'ay espouse.” V. *Fitz. N. B.* 375. n. “If a Female Servant marries, she can not be taken from her Husband during Coverture.” But see Lord Ch. Just. *Hale's* Edition 392. in the Notes—“that this was determined otherwise: And it is unlawful to take her during the Espousals.” V. 2 H. 4. 13. b. (the Case here referred to, by Lord Ch. Just. *Hale*.)

The Case between the Parishes of *Clent* and *Elmley Lovat, Mich.*
 1 G. 1. *Foley's Poor Laws* 160. proves fully "that intermediate
 Marriage does *not* prevent a Person hired for a Year from gaining
 "a Settlement." And *Sessions Cases*, Edit. 1750. S. C. says, "An
 "Hiring and Service gains a Settlement, *notwithstanding* Marriage
 "within the Year." And then it goes on thus: "N. in Case of
 "Farington, one hired for a Year in Farington marries; Two
 "Justices remove out the Servant, by Consent of the Master, to
 "Wilcote in Oxfordshire, within the Year. Upon Appeal of W.
 "this Fact stated. Order confirmed: But King's Bench QUASHED
 "it."

3dly. Mr. Bathurst observed that the Justice has made no Order
in Writing. Now 5 Eliz. c. 4. § 5. directs the Justice to "hear
 "and order;" which implies an Order *in Writing*, as All their
 Orders are: Whereas here is *no* Order *at all*, as far as appears by
 the State of the Case.

Mr. Ingram on the other Side (for the Inhabitants of *Hanbury*)
 said, There are two Questions in this Case—

1st. "Whether the Pauper gained a Settlement in *Tradebigg*:"

2d. "Whether He gained a subsequent One in *Hanbury*."

These Questions will depend on the Construction of 3 & 4 W. &
 M. c. 11. and 8 & 9 W. 3. c. 10. *sect.* 4.

First—The little *Absence* of 3 Days at first, and a *Fortnight* af-
 terwards, for which there was a *Deduction of Wages*, will *not* de-
 stroy the Settlement in *Tradebigg*. To prove this, He cited P.

* 1 Sir John

Strange 423.

† V. ante, N^o

14. pa. 47.

48. This

Case, and the

Principles on

which it goes,

are in Point.

|| Ante, N^o

20. pa. 68.

§ Ante, N^o

73. pa. 230.

7 G. 1. *Rex v. Inhabitants of * Islip*; and the Case between the
 Inhabitants of *Eaton* and *North Wheatly*, † *Tr.* 8 & 9 G. 2. *Rex v.*
Inhabitants of || Castlechurch, M. 9 G. 2. and *Rex v. Inhabitants of*
 § *Beccles, P.* 17 G. 2.

Here, the *Service* CONTINUED during the *Whole Year*: For He
 was a Servant from *Michaelmas*; and the *Absence* for the three first
 Days was *dispensed with* by the Master's *receiving* Him.

It is not necessary to be *actually* in the Service. *Bro. Abr.* Title
Laborers, pl. 7. 11. sufficiently prove that a Person may be a pro-
 per and true Servant *without that*.

Second Point—(the subsequent Settlement in *Hanbury*—) He
 admitted that the *Marriage* did not make the Contract void; but
 insisted that it made it VOIDABLE, at the Election of the *Master*.
 The *Servant* is not at Liberty to *depart*; but the Master may DIS-
 CHARGE for this Cause.

Mr. Bathurst's Cases out of the Year-Book are determined upon
 the Old Statute of *Laborers*, (23 Ed. 3.) which is repealed by

5 Eliz.

5 Eliz. c. 4. § 1. The 5th Section of this Act is in the disjunctive—
 No Person shall put away his Servant before the End of his Term,
 or Servant retained according to that Act depart from his Service,
 “ Unless it be for some *reasonable Cause or Matter*, or be allowed
 “ before two Justices &c, or one at least, to whom any of the
 “ Parties grieved shall complain: Which said Justices or Justice
 “ &c, shall have and take upon Themselves the *Hearing and Or-*
 “ *dering* of the Matter between the Master and Servant according
 “ to the Equity of the Cause.”

Therefore the Justice was the proper Judge of this Matter, and
has done every Thing that the Statute requires.

An Order to discharge a Servant needs not be *in Writing*. *Bro.*
Abr. Title Laborers, pl. 38. A Servant may be discharged by his
 Master, by Parol. The Contract itself was made by Parol: And
 therefore it may be dissolved by Parol. And this same Justice who
 ordered the Discharge, made the Order of Removal.

I do not deny “ that a married Servant *may* gain a Settlement :”
 But I say that it is in the *Option of the Master*.

The Case of *Farrington and Wilcot*, in 2 Salk. 529. is an Au-
 thority for Us. It is adjudged “ That the Justices cannot annul
 “ the Agreement between Master and Servant, UNLESS it be *upon*
 “ *Complaint of the Master*.” There the Master did *not* complain;
 Nor was there a previous Application to a Magistrate for his Dis-
 charge, before the Order of Removal.

As to the Case of *Clent and Elmley Lovat*—It was there laid
 down “ that the Marriage did not destroy the Settlement where
 “ the Servant *continued*.” But it does not follow “ That the
 “ *Master* can not *discharge* his Servant on Marriage.”

If then the Pauper Himself be removable—To *what Place must*
the WIFE be sent? The Answer is plain: She must certainly be
 sent to TARDEBIGG, the Settlement of the Husband: For He has
 not yet gained any at *Hanbury*, before the End of the Year's Service
 there.

Therefore it follows, that He must be sent thither too: Other-
 wise, it would be a temporary Divorce.

Ld. Ch. J. LEE and the THREE OTHER JUDGES thought
 the first Point (about the Settlement in *Tardebigg*) sufficiently an-
 swered by the Cases cited by Mr. *Ingram*.

In the Case of *Rex v. Inhabitants of Islip*, There were a great
 many Absences; and One of them was 3 Days before the End of
 the Term, *contrary* to the Will, and after the *Refusal* of the Master;
 and the Servant did *not return* afterwards; and an *Allowance* was
 made

made in the Wages for the Time He was absent: And yet it was holden to be a *good Settlement*.

Therefore this Case is in Point, as to every Thing, but the Difference of the 3 Days being at the *Beginning*; which does not make any *real* Difference at all: For SERVICE has *not* been taken strictly, though *Hiring* has.

The 3 Days Absence of the Servant in the Beginning of his Service was *purged* by the Master's *receiving* him.

2d Point. As to the DISCHARGE of the Servant—That ought to be done by the Justice AS a *Magistrate*, that is, BY an ORDER. It is an *Act of Jurisdiction* in the Justice; and therefore ought to be *in Writing*.

The Act of 5 *Eliz. c. 4. § 5.* requires a *sufficient Cause* of Discharge, to be allowed by One or more Justices of Peace, on *bearing and ordering* the Matter.

Now here does not appear to be any HEARING: And it is certain, there is NO ORDERING. Nor, as Mr. Justice *Wright* thought, is there ANY *reasonable Cause*: For what Objection is the *Marriage*? 'Tis no *Misdemeanour*: And the Justice can not discharge but FOR *Misdemeanour*.

Therefore He is *not* discharged; nor (by Mr. Justice *Denison* and Mr. Justice *Foster*) can He be thus discharged *against his own Consent*. Consequently, the Settlement at *Hanbury* goes on; and is his last legal Settlement.

Per Cur. unanimously—

The last legal Settlement is in *Hanbury*: And therefore They AFFIRMED the *Order of Sessions* which had QUASHED the *Original Order* made for removing the Paupers from *Hanbury* to that Part of *Tardebigg* which is in the County of *Warwick*.

Nº 116.

Rex v. The Inhabitants of Acton Beauchamp.

Friday 29th
June 1753.

MR. Nares moved to quash an Order of Sessions which discharged an Order of Two Justices made for the Removal of *Thomas Bittington*, *Sarah* his Wife and their 4 Children *Mary*, *William*, *Sarah*, and *Thomas*, from *Acton Beauchamp* in *Warwickshire* to *Cradley* in *Herefordshire*.

Case stated—The Pauper, about 17 Years before the making of the Order, purchased an Estate in *Cradley*, (but lived then in *Acton Beauchamp*,)

Beauchamp,) and paid 38 l. as the Consideration for it. That he borrowed 24 l. of the money; and then mortgaged the premises, for securing the same. That He never lived upon the Estate Himself; but set it to one *Crisp*, at 1 l. 18 s. 6 d. per Annum; The Landlord to pay the Land-tax, and the Tenant all other Taxes. That *Crisp* rented the Premises of the Pauper for 14 Years: During all which Time, the Pauper was RATED to the Land-tax; but the Tenant paid it, and was allowed it again by the Landlord out of the Rent. That the Pauper resided in *Cradley*, 7 Years of the Time He was Owner of the Premises; though not upon his own Estate. That He has lately sold it, and then paid off the Mortgage. Whereupon the Sessions vacate the Order of the two Justices.

Mr. *Nares* said this was so clear a case that there was no Need to cite any Authorities.

A RULE was made to SHEW CAUSE: And

On Wednesday 11th of July, It was MADE ABSOLUTE without Defence.

V. ante, N^o 17. N^o 18.

Perhaps I may be blamed for inserting this *undefended* Case; Especially, as the Volume would have otherwise concluded with a very pretty Case, and very well defended: But I chose to mention it, lest any Gentleman might have taken a Note of the Motion to quash the Order; and not have known what afterward became of it.

Michaelmas Term 27 G. 2. 1753.

No Determination of this Kind.

Hilary Term 27 Geo. 2. 1754.

Nor in this Term.

ON Wednesday Evening 3d of April 1754, LORD CHIEF JUSTICE LEE was taken with an Apoplectic Fit; and died early on the following Monday Morning, the 8th.

He was a Gentleman of most unblemished and irreproachable Character, both in public and in private Life; amiable and gentle in his Disposition; affable and Courteous in his Deportment; chearful in his Temper, though grave in his Aspect; generous and polite in his Manner of Living; sincere and deservedly happy in his Friendships and Family-Connexions; and to the highest Degree upright and impartial in the Distribution of Justice.

He had been a JUDGE of the Court of King's Bench almost twenty-four* Years; and for near seventeen of them had *presided* in it. In this Station, the Integrity of his Heart and the Caution of his Determinations were so eminent, that they probably never will, perhaps never can be exceeded.

* He first took his Seat upon the Bench, as puisne Judge, on the 15th of June 1730.

¶ *V. ante*, 105.

He was peculiarly Master of that Sort of Knowledge which is the Subject of the foregoing Sheets.

The End of the FIRST VOLUME.

DECISIONS

U P O N

ORDERS of JUSTICES

Made for the REMOVAL of PARISH-POOR
to their last legal SETTLEMENTS.

A CONDITIONAL Hiring for a Year, with a *Year's Service per-* N^o 1.
formed under it, gains a Settlement. This Servant was hired
for a *Quarter* of a Year; "and if her Master and she liked
" one another, she was to continue for a Year, and to have 3*l.* for
" her Year's Wages." She entered into the Service, *continued a*
Year in it, and received the 3*l.* Wages. The Court held that she
thereby gained a Settlement. 1. *V. Post*, N^o 7. N^o 71. N^o 101.

Jacob Maile, the Pauper, was an Infant of nine Years of Age. N^o 2.
His *Father's* Settlement was *not* known: His *Mother's* Settlement
before their Marriage *was* known. His Father died: His Mother
married a *second* Husband, who had a Settlement; and she, conse-
quently, gained a *new* Settlement by this second Marriage.

1st, *Jacob Maile's* Settlement is where his *Mother* was last set-
tled *BEFORE* her Marriage with *Jacob's* Father; the *new-*
gained Settlement of his Mother *not* being gained in her own
Right, but only in Right of her second Husband. 3. 4.

2d, *Young Children* sent to or along with their Mother for *NUR-*
TURE only, are to be supported at the *Expence* of the Parish
where their *legal* Settlement is. *Ibid.*

Tooke, a *Tide-waiter*, resided in *Kenton*, and had a Salary. He N^o 3.
was rated for this Salary, to the *Land-Tax*, in *Kenton*. It was PAID,

U u

some

some Time by himself, but REPAID to him by the Collector of the Customs; and afterwards, by the Collector. He gained a Settlement in Kenton. 6. V. Post, N^o 22.

N^o 4.

A Person can not be removed from his own, which comes to him as *Executor* or *Devisee*. *Thomas Gates* the Pauper, was *Devisee* and *Executor* of his Father, of a Tenement in *Hever*, demised in 1701, for ninety-nine Years, at 5s. per Annum; and resided upon it. Two Justices removed him from it; and the Sessions confirmed their Order: But the Court quashed both Orders. For, this was not such a Coming to settle in a Parish as the 13 & 14 C. 2. c. 12. intended to prevent; because he came to it by a precedent Right and Title; not as a *Wanderer*, or with a bad design. Consequently, the Value of it is not material; any more than it is in *Freeholds* and *Copyholds*, from which the Owner can not be removed. 10. 11. V. Post, N^o 40.

N^o 5.

If an *Apprentice*, by the Consent of his Master, resides in another Parish for forty Days, he gains a Settlement therein. This Case was — *Alice Wheeler*, a Parish-Girl, was by the Parish-Officers by Assent of two Justices put Apprentice, by Indenture, to *George Leicester* of *St. George's Hanover-Square*; where she served him forty Days, and gained a Settlement. Afterwards, and during her Apprenticeship, he hired her out, by Parol-Agreement, to *John Hall* of *St. Mary le Bon*; where she resided and worked above forty Days, (viz. a Year and upwards,) the said Apprenticeship continuing: During which Time, her first Master *George Leicester* received her Wages and found her in Cloaths. Her Settlement was adjudged to be in *St. Mary le Bon*. 15. 16. V. Post, N^o 43. 91.

N^o 6.

An Order of Sessions DISCHARGING an original Order of Removal concludes only those two Parishes who are then contending. Therefore the same Paupers may be afterwards removed to the same Parish, from a third Parish; (who may be furnished with stronger Evidence to charge them, than the former Parish gave.) 18. 19. V. Post, N^o 89.

N^o 7.

Diana Brooks was hired to *Colonel Meyrick* at *Thorpe*; and was to go into her Service a Month upon Liking; and was to have 5l. a Year Wages; but was to go away from her said Service on a Month's Wages or a Month's Warning on either Side: She continued near two Years in her said Service, without any other Hiring; and received her

her Wages quarterly. This, by the unanimous Opinion of the Court, is a *Hiring for a Year* at *Thorpe*: And she gained a Settlement there.

21. 22. *V. ante*, N^o 1. and Post, N^o 71. N^o 101.

An Order of Removal made by two Justices, on the Complaint N^o 8. of a Parish in *Bucks*, removed the Paupers to a Parish in *Middlesex*. It had *no County* named in the *Margin* of it: And the Justices only denominated themselves "Justices of the Peace (*Quorum unus, &c.*)" "for the County *aforsaid*." And the whole Order was, in Strictness of Grammar, so penned as to be *all mere Recital*; viz. "Whereas" "it appears to us, &c." And "we do accordingly adjudge," &c.

24. 25.

1st, It might be too hard to quash it for the *Want of an Adjudication*, when it does contain the Words "We do adjudge." 24.

2d, But it is quite *uncertain* for *which County* they are Justices; and the Court can *intend nothing*: The Justices must *shew* that they have Jurisdiction. For *this Defect*, therefore, the Order was quashed; and also the Order of Sessions which confirmed it. 24. 25.

Two Justices removed *Joseph* the Son of *Joseph Haighington*, from N^o 9. *St. Peter's* to *Old Swinford*, as being a *Bastard* born on the Body of *Hannah Aske* at *Old Swinford*. On Appeal, the Sessions take the Examination of *Joseph Haighington*: Who proves Cohabitation with *Hannah Aske* for seven Years, and till her Death, and their being reputed Man and Wife; and three Children baptized and *reputed* as legitimate; of whom this *Joseph* born at *Old Swinford* was one: But that he and the said *H. A.* were *never married*. The Sessions vacate the original Order; being of Opinion "that the Evidence of the said *J. H.* can not support it, so as to *bastardize* the said *Joseph* the Infant removed; the said *J. H.* having *cobabited* with the said *Hannah* near seven Years." 26.

1st, The original Order was affirmed, notwithstanding the *Impropriety* of calling the Bastard the Son of *J. H.*: Whereas, strictly speaking, a Bastard is *nullius Filius*. *Ibid.*

2d, The Order of Sessions was quashed, as being unsupportable. 27.

3d, The Evidence of *J. H.* was properly admitted by the Sessions. 26. 27.

N^o 10.

William West, a Certificate-man from *St. Thomas's*, came into the Parish of *St. Mary Calendar in Winchester*. He was afterwards chosen one of the Constables for the City of *Winchester*, which City consists of several other Parishes besides that of *St. Mary Calendar*; and was legally placed in that Office, and executed it in and through ALL Parts of the City for one whole Year. During that whole Year, and for some Years before and ever since, he constantly inhabited and resided in the said Parish of *St. Mary Calendar*. Afterwards, he took *Joseph Talmage* an Apprentice to him, by Indenture duly executed; who continued with him as such for about four Years and a Half. By the Court, unanimously, the Master avoided his Certificate, and gained a legal Settlement in *St. Mary Calendar's*, by executing this annual Office in that Parish; though CHOSEN by the whole City, not by the Parish of *St. Mary* singly; and though not a mere PARISH-Office. Consequently, the Apprentice is settled there too; and not precluded by 12 Ann. Stat. 1. c. 18. sect. 2. It was holden that 3 & 4 W. & M. c. 11. and 9 & 10 W. 3. c. 11. ought in this Point "of executing a public annual Office in the Parish," to receive the same Construction: And all these Laws ought to be construed liberally and in Favour of Settlements. 32. 33. 34. V. Post, N^o 81.

N^o 11.

Southwold Park was stated to be an extraparochial Place consisting of two Houses and about three hundred Acres of Land only, of the Value of near 300 l. per Annum, belonging to and occupied by different Persons; not appearing to have ever had any Persons appointed to receive and provide for the Poor happening therein. 35. 1st, The Court can not take this Place to be a Town or Village. 37. 38. 39. But 2d, A Settlement may be gained in an extraparochial Place, provided it comes under the Notion of a Town or Village. Ibid. V. Post, N^o 31. 3d, And Overseers may be appointed for such a Place. 38. 4th, And a Mandamus will lie for that Purpose. 39.

N^o 12.

Resolved

1st, "*Lincoln Holland*" in the Margin of an Order of Removal is well enough, though not expressed "*Lincolnshire*." The former means the Division; the latter, the County: And the Court will take Notice of the three Divisions of this County. 42.

2dly, Where the County is mentioned *only in the Margin* of an Order, and neither repeated *nor referred to in the Body* of the Order, it is bad: But where there is *such a Reference*, an Order will be well enough. 43. *V. Post*, N^o 45. 69.

3dly, An Order of Removal can only be made upon Complaint made by the *Churchwardens and Overseers of the Parish where the Pauper comes to reside*. 40.

4thly, If such Complaint is express "that the Pauper is likely to become chargeable to *their particular Parish*;" but the Justices only adjudge generally, "that the Pauper is likely to become chargeable;" (without specifying to whom,) such Order is bad: For the Adjudication must *either* be an express Adjudication "that the Pauper is likely to become chargeable to the *Parish complaining*;" or it must have a *plain Reference* to the Complaint. 43. *V. Post*, N^o 45.

5thly, Two Justices remove a Pauper to *Bourne*, having been an *Apprentice* to one *Lambert*, a Glover, in that Parish: And therefore they adjudge *B.* to be the last legal Place of his Settlement. It was objected "that they ought to have shewn that the Master was *not a Certificate-man*, and that the *Apprentice* served forty Days there." This Objection was answered and over-ruled. 42.

6thly, So was another Objection—"That the Order was directed to the Overseers of the *Parish*; not to the Overseers of the *Poor* of the Parish." *Ibid.*

7thly, And another—That they describe themselves as two Justices *Quorum unus*: And that "*Quorum Unus* is *Latin* and not a technical Term, (though *Quorum alone* is a technical Term.)" *Ibid.*

J. P. rented a *House* in *Studland* at 30s. *per Annum*. After he N^o 13. had lived in it about two Years, he took a Tenement or Lands in *Langton*, of the yearly Value of 12l. on which there was *no House*; and occupied it two Years: All which Time he *inhabited* in and rented also the *said House* in *Studland*. His Settlement was in *Studland*, the Parish where he lived. 46.

1st, It has been a Question, "Whether two *distinct* Tenements taken at *different* Times (where neither of them alone amounted to 10l. *per Annum* in Value) should make a Settlement:" But it is now settled "That it *does*;" and 'tis the same Thing whether the Taking was *distinct*, or *entire*;

fire; or in *one* Parish, or in *two* Parishes. The Settlement is in the Parish where he *lives*. *Ibid.*

2dly, The Ground of these Resolutions is the *Ability* to rent a Tenement of such a Value; Which excludes the Presumption of his being *likely to be chargeable* to the Parish. 46. 47.

N^o 14. *William Dracket* was hired for a Year, in *Eaton*: About the *Middle* of it, he *absented* himself *without* his Master's Leave, for *about three Weeks together*; and then, upon the *Demand* of his Master, returned, and served out the Remainder of the Year. He gained a Settlement in *Eaton*, notwithstanding 8 & 9 *W. 3. c. 30. sect. 4.* For his Absence was *purged* by the Master's receiving him again: Besides, the Court will *not be over-nice* in Services under this Statute. 48. *V. infra*, N^o 20. 78.

N^o 15. *Thomas Man*, who married *D. B.* having then *Deborah* (the Pauper) his Daughter, of the Age of *ten Years* or thereabouts, hired a Farm of the yearly Value of *100l.* in *Barton-Turfe*, which he occupied for about three Years, and died there. *After his Death*, his *Widow* removed from *B. T.* to *Happisburgh*, and dwelt in a House and occupied Lands there, of the yearly Value of *4l.* which were given to her by the *Will of her Father*: And *Deborah* her Daughter (the Pauper) being then of the Age of *thirteen Years* went and lived with her Mother as Part of her Family, for about a Year and a Half. 49.

1st, The Word "*then*" was construed to refer to the *Time of hiring the Farm*; not to the *Time of his Marriage*. 51.

2dly, The Daughter gained a new Settlement in *Happisburgh*, by living with her Mother there, as Part of her Family, upon the *Mother's Own*: For a Child may gain a Settlement under its *Mother* after the *Father's Death*, *equally* as under its *Father* whilst alive. The *Mother's Settlement* has the *same Effect* upon the Child as the *Father's* had. 51. 52.

V. Post, N^o 19.

3dly, It is *not* necessary that it should appear "that the Child (being above seven Years old) had *not* gained a Settlement of its *own*:" For, such a Settlement shall not be presumed, where none appears. 53.

N^o 16. *W. S.* agreed for a Farm in *Eardisland*, at *44l. per Annum*, and sowed Part of it, and came to reside in it: But after he had inha-

lived there about *three Weeks*, his Stock was seized; and he came to a new Agreement with his Landlord "to continue in the Farm-house with a small Parcel of Land at 3*l.* 10*s.* only, payable at the End of the Year." He did not hereby gain a Settlement in *Eardisland*; not having inhabited there *forty Days* under the first Agreement. 55.

A Pauper who had a Leasehold Messuage of more than 30*l.* per N^o 17. *Annum* Value, and had lived in it several Years, and afterwards sold it, is not removable from the Parish where it lies, after he has sold it. It is not like the Case of a Purchase of an Estate under the Value of 30*l.* *bonâ fide* paid; in which Case, the Purchaser shall (by 9 G. 1. c. 7. sect. 5.) be removable as soon as he shall cease to inhabit it. 56. 57.

Francis Gill, settled at *Tedford*, contracted with J. A. for a House N^o 18. and Curtilage in *Waddingham*, for 39*l.* which was conveyed to Gill and his Heirs. Gill paid 9*l.* and J. B. paid the remaining 30*l.* to J. A. by Gill's Order. The Conveyance was dated on the 2d but not executed till the 19th of May 1730: And upon 18th of June 1730, Gill mortgaged the Premises to the said J. B. Gill continued in Possession about four Years after the Mortgage. Then J. B. entered, by Virtue of the Mortgage and a Release of the Equity of Redemption. Then the Inhabitants of *W.* procured Gill, being out of Possession, to be removed to *Tedford*. The Sessions Order recites that a Case was made for the Judge of Assize on 9 G. 1. c. 27. s. 5. as above stated, which the Parties agreed to be the true State of the Case: But the Judge had not Time to determine it. The Sessions, upon hearing Counsel and further Evidence on both Sides, declare and adjudge "that the Purchase made by Gill was fraudulent; and that his Settlement was at *Tedford*: But the Parishioners of *Tedford* were no Way concerned in the said Fraud." 57. But this Court held

1st, That this Purchase is not within 9 G. 1. c. 7. sect. 5. which is confined to Purchases under 30*l.* *bonâ fide* paid: Whereas this is a Purchase of above 30*l.* *bonâ fide* paid. 59. V. Post, N^o 27.

2dly, The whole Court, except Mr. Justice Probyn, understood the Case above stated to contain the whole of the Facts that appeared before the Sessions. 60. 61. 62. 63.

3dly,

3dly, The whole Court agreed that if these were the whole of the Facts, they did *not* warrant the Conclusion "that the Purchase was *fraudulent*." *Ibid.*

4thly, They all held that if the Justices *state the Facts particularly and fully*, it is the Province of *this* Court to draw the Conclusions from them. *Ibid.*

5thly, If the Justices had adjudged this a fraudulent Purchase, *generally*, this Court might have been bound by their Adjudication: For, they are Judges of the Fraud of a Purchase, with Regard to it's *gaining a Settlement*. *Ibid.*

N^o 19.

A Child, *after the Death of it's Father*, may gain a Settlement under it's *Mother*, as well as it might before under it's Father. 67. *V. supra*. N^o 15. accordingly. Yet the Sessions confirmed an Order *generally*, contrary to this settled Law; and *refused* to state the Matter *specially*. And, though the Counsel tendered *Exceptions*, therein *stating the Facts specially*; which Exceptions were *read and received* by the Sessions, and returned up with the Orders; yet the Court would not quash the Orders. 65 to 68.

1st, An inferior Jurisdiction are to be *discommended*, when they endeavour to *preclude* the Parties from an Opportunity of applying to a Superior. 66.

2dly, But this Court *can not force* the Sessions against their Will, to state a *special Case*. 66. 67. 68.

3dly, If there be any Method to come at it, it must be by a *regular proper formal Bill of Exceptions*: (which this was *not*.) *Sed v. Post*, N^o 24.

N^o 20.

The Pauper was hired for a Year to *W. B. in Castlechurch*. He came to live with *W. B.* there on 7th *January* 1733, and *continued* with him till 26th of *December* following, and then went away by his *Master's Consent*, and took his *Cloaths with him*, and received his *whole Year's Wages*. This is *not* a Service for a *whole Year*, which is required by 8 & 9 *W. 3. c. 30. sect. 4.* Here the Service was *determined* within the Year: And therefore is not like the Cases where the Contract was *not dissolved* before the End of the Year. 69 to 72. *V. supra*, N^o 14. *Post*, N^o 78.

N^o 21.

In a Poor-Rate for the Parish of *Sarratt*, the *Landlord* was charged; but the *Tenant*, upon the *Demand* of the Overseers, paid it. The Tenant was afterwards removed, as a Pauper, to *Bovington*.

ton. *Bovington* appealed: And, because *Sarratt* did not produce the Order, the Appeal was allowed. After which Allowance of the Appeal, two Justices remove him from *Sarratt*, back to *Bovington*.

1st, No Settlement can be gained under 3 & 4 W. & M. c. 11. sect. 6. unless the Person be both charged with and pay the Rate. 74. *V. Post*, N^o 29. 30.

2dly, This Allowance of the Appeal is not a Quashing or Discharging of the original Order, so as to bring it within the Rule "that where the Sessions, upon an Appeal from an Order of Removal, discharge it, this binds the two contending Parishes only; but if they confirm it, the Parish charged is bound thereby, as to all other Parishes whatsoever:" For this is no Judgment by the Sessions one Way or the other. *Ibid.*

Being charged and paying two quarterly Payments to the LAND-*N^o 22.*
TAX ONLY, gains a Settlement. 76.

1st, The Act of 3 & 4 W. & M. c. 11. sect. 6. does not require a Payment for a whole Year: It only requires being charged and paying his Share towards the Public Taxes or Levies of the Town or Parish. *Ibid.*

2dly, It has been a Doubt "Whether the Legislature did not mean *Parochial Taxes*:" But the *Land-Tax* has been holden to be within it, from the Notice of Inhabitaney arising from the being assessed to it and paying it. *Ibid.* *V. ante*, N^o 3. and *Post*, N^o 27.

An Order was made for removing *Frances Swift* and her 3 Children N^o 23. (properly named and described) from *Brampton* to *Mansfield*; reciting that it appeared to the Justices, on the Oath of the said *Frances Swift* taken in Writing, "that her Husband *Godfrey Swift* was last legally settled in *Mansfield*:" This Order and the Order of Sessions which confirmed it, were quashed; the Children not being removed as his Children, nor she as his Wife. 77.

Two Justices removed the Children of *Thomas Harrison* deceased, N^o 24. from *Daresbury* to *Preston*: Which Order the Sessions confirmed generally, refusing to state any special Case. The Counsel for *Preston* thereupon tendered to them a BILL OF EXCEPTIONS; which was received and filed, and sealed by two of the Justices. It stated the Evidence to have been "That *Thomas Harrison* was licensed School-

“ *master of the Free Grammar-school of Daresbury, and became*
 “ *CLERK of the PAROCHIAL CHAPEL of Daresbury, and officiated*
 “ *in both Capacities to his Death; and for fourteen or fifteen Years*
 “ *of the latter Part of the Time resided in Daresbury; and that the*
 “ *Children had gained no Settlement for themselves.*” 77. 78.

1st, It was unanimously resolved, That a BILL OF EXCEPTIONS will NOT lie to this summary Jurisdiction of the Justices. 79 to 86. *V. ante*, N^o 19.

2d, Their Order was *therefore* affirmed: But the Reason of affirming it, (*viz.* “ The Court being of Opinion, that no “ Bill of Exceptions lies in this Case,”) was inserted in the Rule; to prevent establishing the *erroneous Opinion* of the Justices, upon Supposition that the Facts stated in the Bill of Exceptions were the real and true Facts whereupon they grounded their Opinion. 86. *V. infra*, N^o 26.

N^o 25.

James Rogers hired himself to serve for *Half* a Year, from about a Week before *Christmas* till *Midsummer* following, and served accordingly: After the Expiration of that Time, he *continued* with his Master in his Service for about a Week; and in that Time *covenanted to serve him till Lady-day then following; and did so.* This was admitted *not* to be a good Hiring for a Year. 87.

N^o 26.

Daniel Helliwell went by Certificate from *Errenden* to *Wadsworth*; then was *licensed* to be Clerk of a Parochial Chapel at *Heptonstall*, and resided a Month at *Wadsworth* (*Wadsworth, Errenden and Heptonstall* being different Towns in the same Chapelry;) then removed to *Heptonstall*, and inhabited there five Months; during all which Time, he EXECUTED the Office of Clerk of the Chapel there. 88. *V. supra*, N^o 24.

1st, It was objected “ that a Licence from a Bishop will not “ gain a Settlement without a CHOICE by the PARISHIONERS.” (Against which Objection, *Strange* said he would have undertaken to support the Order of Sessions which held him to be settled at *Heptonstall*.) 88. *V. ante*, N^o 24.

2dly, But a second Objection to it was holden fatal; and the Order was quashed upon it; *viz.* “ That the Caption only “ specified the Day whereupon the Sessions was holden by “ Adjournment: But it did not appear, when the original “ Sessions was holden.” *Ibid.* *V. Post*, N^o 32.

3dly, *Strange* took Exception to the Order of two Justices—

"That it did not set out the *Ages* of the Children." But, *per Cur.*—Where they only adjudge the Place to be the last legal Settlement of the FATHER, and send the Children thither only in Consequence of it's being their *Father's Settlement*, the Ages of the Children *must* be specified: But where they adjudge the Place to be the last legal Settlement of the CHILDREN *themselves*, it is *not* necessary to set out their Ages. Here, they have adjudged *Errenden* to be the Place of *their* last legal Settlement: Therefore the Order is well enough. 89. *V. Post*, N^o 29. 45. 57. 63.

Robert Scott had a Feoffment made to him, by his Wife's Grand-mother, of less than 30*l.* Value, since 9 G. 1. c. 7. sect. 5. which he entered upon, dwelt in, and was *charged and paid* to the Land-Tax for it. This Tenement lay in *Merstham*. An Order for removing him and his Wife and Children from *Merstham* to *Worth* was confirmed at Sessions. Both Orders were quashed: (But they were quashed *without Defence*.) 91. *V. ante*, N^o 18. and N^o 22.

James Blyth, under sixteen and unmarried, was bound *Apprentice* N^o 28. to *J. B.* of *St. Peter's* within the Burrough of *Ipswich*, by Indenture and with the Consent of his Father, for the Term of *FOUR Years ONLY*; and dwelt with and served his Master in *St. Peter's*, only the said four Years. The Sessions being of Opinion "That the said Binding and Inhabiting pursuant thereto did *not* intitle the Pauper to a Settlement in *St. Peter's*; *because* he was not bound for *SEVEN Years*, according to the Statute in that Case," (meaning 5 *Eliz.* c. 4.) But the Court quashed their Order, and affirmed the original Order. 93 to 97.

1st, The 41st Section of that Act *has Relation to the other* Clauses of it, so as to reach the 26th Clause. 94.

2dly, But it does *not* make the Indenture VOID; but *only* VOIDABLE by the *Parties themselves* (if *they* think fit to take Advantage of it,) NOT by the PARISH. 94. 95. *V. infra*, N^o 84.

3dly, The Court looked upon this Statute as a Law more beneficial to *Corporations* than to the Public; which had not been much regarded or favoured; and which ought not to be enforced by a strict and rigid Construction. 97.

N^o 29.

Richard Knight was removed with his Wife and five Children, from *that Part* of the Parish of *Bramshaw* which is in the County of *Southampton*, to *that Part* of the said Parish which is in the County of *Wilts.* 98.

1st, This Order was quashed because it *did not appear* that these were *distinct Villis*, and had *separate Officers*, and maintained *each their own Poor separately*: For, it only appeared by the *Direction* of the Order, "That there were different *Officers*;" and the *Direction* is no Part of the Order. 99. And the Court can take nothing by *Intendment*. *Ibid.*

2dly, *Payment* of Parish Rates gains no Settlement, unless charged also to such Payment. *Ibid.* *V. ante*, N^o 21. accord. and Post, N^o 30.

3dly, The *Ages* of the Children need not be *set out*, where the Justices adjudge the Place to be the Settlement of the Children themselves. *Ibid.* *V.* N^o 26. 45. 57.

N^o 30.

Being RATED to the public Taxes, and *Payment*, are BOTH of them necessary in order to gain a Settlement; 101. *V. ante*, N^o 21. 22. 29. accord.

N^o 31.

The Manor of *Grafton*, an *extra-parochial* Place, once consisting of a capital Messuage and three Keepers Lodges in the Park, now disparked, and now consisting of *five* Dwelling-houses and Farms occupied by *five* several Tenants; but *never* having had any Overseer of the Poor or other Officer, till the Overseer now appointed for the Purpose of this Removal: *Query*, Whether this be a *Township* or *Village* within 13 & 14 C. 2. c. 12. sect. 21. The Justices held "that it was." Their Order was quashed; But it was without Defence. 102. *V. supra*, N^o 11.

N^o 32.

Two Justices made an Order of Removal. An Appeal was lodged at an *adjourned* Sessions: Who confirmed it. But they did not shew *when* the *original* Sessions was first holden: Therefore their Order of Confirmation was invalid. (*V. ante*, N^o 26. 2d Exception.) Before the said Appeal was lodged, and without any subsequent Settlement gained, two Justices (one of whom made the first Order) made a *second* Order of Removal of the same Paupers to another Place: Which was appealed from; and the Appeal adjourned. The first

first Order of two Justices was confirmed by this Court; and all the other Orders quashed. 103.

Here end the CASES in Lord HARDWICKE's Time.

RENTING a *Water-mill* or a *Windmill* of the Value of 10*l.* N^o 33.
per Annum gains a Settlement, just as well as renting *Land* of that Value: For, a *Mill* is as much a *Tenement*, as *Land* is. 108.
 109. And having had a *Surety* who engaged for Payment of the *Rent*, does not prevent gaining the Settlement. *Ibid.*

John Board lived with his Father and Mother in a *Cott-house* in N^o 34. *Widworthy*, of the yearly Value of 30*s.* whereof his Father had been many Years possessed for the Residue of a *Term of Years* determinable upon Lives. The Father died so possessed, WITHOUT a *Will*, (his Wife being dead before him) leaving *John Board* the Pauper and one other Son (who is still living, and took his distributive Share and Part of his Father's Estate and Effects, in Goods.) *John*, after the Death of his Father, lived and continued in Possession five or six Years, and until the Lease determined. AFTER which Time, and AFTER making the original Order, he took Letters of Administration to the Goods and Chattels of his Father. The Sessions were of Opinion "That *John* gained a Settlement in *Widworthy* " by possessing and living in the said Cottage-house;" and quashed the original Order which removed him from *Widworthy* to *Farringdon*: But this Court reversed their Order, and affirmed the original Order. 109 to 112.

1st, Nothing vested in *John*, before Administration: Therefore he was removable till Administration obtained; and consequently well removed. 110. 111. 112.

2dly, The Sessions ought not, upon a Matter arising *ex post facto*, to have quashed an Order good at the Time of its being made. 110.

3dly, The Administration taken out AFTER the Term was EXPIRED could not give him an Interest in the expired Term. 111.

4thly,

4thly, There was *no Time during it's Continuance*, when he was *irremovable*: And therefore he gained *no Settlement*.
III. 112.

N^o 35. Was *not* determined upon the *Merits*: Therefore it must not be considered as an Authority in *that* Respect. 113. 114. If the Sessions refer a Case conditionally to the next Judge of Assize, they must *continue* the Appeal by *Adjournment* to a future Sessions: Or else, they can not take it up again. 114.

N^o 36. The Orders were quashed *by Consent*; in order to have the Facts more fully stated:—Therefore this Case is *no Authority*. 115.

N^o 37. William Trim hired himself to R. H. of West Stower, from Midsummer to Lady-day, at 40 s. for those three Quarters of a Year. At Lady-day, he received his Wages of 40 s. and LEFT his Master's Service, and then went to his Father's House in West Stower; and in about an HOUR returned to his Master and agreed with him for a Year, at 3 l. 10 s. a Year, and lived with his Master Half a Year in Pursuance of the second Agreement. When he went from his Master's House, he had no Cloaths but what he wore, except a Shirt, which he left at his Master's House. *Per Cur.*—His Settlement is in West Stower: For, this short Absence, thus circumstanced, is NO DISCONTINUANCE of his Service, sufficient to prevent a Settlement; and if there be BOTH a *Hiring for a Year* AND a *Service for a Year*, it is not necessary that the Service should be under the SAME Contract or the very same Bargain. The Acts of 3 & 4 W. & M. c. 11. sect. 7. and 8 & 9 W. 3. c. 30. sect. 4. ought to receive a liberal Construction. 117. 118. V. Post, N^o. , and N^o.

N^o 38.

Went off by Consent, in order to be more fully stated: For, it stated only Evidence; whereas a special Order, like a special Verdict, is not to state the Evidence of the Fact, but the *Fact itself*. 121.

N^o 39.

A married Woman's Maiden Settlement is SUSPENDED during her Coverture; so that she can not be sent to it in the Life-time of her Husband, though he has none of his own: But it *does not cease*; it *revives* again, after his Death. 123. *Sed v. Post*, N^o. , where it was solemnly and unanimously settled "That it is *not* suspended, but *continues*. 124. V. Post, N^o 97.

Residence

Residence for forty Days, being irremovable all the Time, gains a N^o 40.
Settlement: And if a Man resides forty Days where he has an Estate of his own, he acquires a Settlement there; although he lodged at a Public-house as a Guest or Traveller, and had no Bedding or Household Goods in his own House; and although the forty Days were not successive or at any one Time, but he was as long absent as he ever was present. 128. V. Post, N^o 42. N^o 72.

A poor Child was bound Apprentice by the Parish-Officers of N^o 41. Woolstanton to a Master in Uttoxeter, by the Assent of two Justices of the Peace. Two Justices removed him to Uttoxeter. The Sessions quashed this original Order: And this Court affirmed the Order of Sessions. The Point resolved was, that to make a Binding good under 43 Eliz. c. 2. sect. 5. one of the two Justices who assent to it must be of the QUORUM: And this must be alledged in the Order; for this Court can not intend a Settlement, where the Justices do not set out what is sufficient to shew one. 130. 131.

If a Pauper has an Estate of Freehold and Inheritance in a Place, N^o 42. yet he can not be removed to it, unless he has been settled at it so as to be irremovable from it for forty Days. But such Residence needs not be upon it; it is sufficient if it be in the Parish: And forty Days in the whole is sufficient; 'tis not necessary that they be forty Days together at one Time. 133. V. supra, N^o 40. and Post, N^o 82.

The Master of a Parish-Apprentice dying intestate, his Widow, N^o 43. without any Administration taken out, assigned the Apprentice to Edward George; who, with the Consent of the Apprentice, assigned him over, by verbal Agreement, to Thomas Baggaley of East Bridgeford, for the Remainder of his Term of nine Years: And he accordingly lived with the said T. B. at East Bridgeford, and served out his Time there, (which far exceeded forty Days.) This was unanimously holden to be a good Settlement in East Bridgeford: For, though an Assignment of an Apprentice be not strictly legal, yet where an Apprentice has lived and served forty Days under an Assignment, he shall gain a Settlement, because of the Consent, even though it be only a verbal Agreement. 135. V. Post, N^o 91.

N^o 44. An Order of Removal appeared to be wholly grounded upon an Examination taken by two Justices of another County; and was therefore quashed. They ought to have examined into the Matter themselves; and in the Presence of both together, not separately. And though they were not bound to set forth the Grounds of their Adjudication; yet when they do set them forth, the Court are to judge of them. 137.

N^o 45. In an original Order of Removal
 1st, The County in the Margin is sufficient, if plainly referred to. 139. *V. ante*, N^o 12.
 2dly, The Ages of Children need not be specified, where the Place is adjudged to be their Settlement. *Ibid.* *V. ante*, N^o 26.
 3dly, There must be both a Complaint and an Adjudication
 “ of being likely to become chargeable to the particular
 “ Parish from whence removed.” *Ibid.* *V. ante*, N^o 12.

N^o 46. S. P. with the last Point of the last Case, (N^o 45.) Order given up as indefensible. 140.

N^o 47. 1st, A Tenement worth only 6l. 10s. per Annum, with a Covenant “ to build a Stable &c &c;” which was never performed, but by which the Landlord MIGHT have made it worth 10l. a Year, is not a sufficient Taking, to gain a Settlement under 13 & 14 C. 2. c. 12. 142. 143.
 2dly, The original Order needs not specify the Ages of the Children, where it expressly adjudges the Place to be their Settlement. 143. *V. ante*, N^o 26 and 45.
 3dly, “ Upon DUE Proof” imports that the Complaint of the Parish-Officers was well grounded. *Ibid.*
 4thly, “ Town of Southwold” in the Margin of it; and “ Justices of the said Corporation” in the Body of it; is well enough. 143. 144.

N^o 48. On a poor Boy's being put Apprentice, his Grandfather agreed to pay the Master 30s. to clothe the Boy: The Master laid it out in clothing him; and the Grandfather paid him the 30s. again. No Mention was made of this 30s. in the Indenture; nor was it stampd, or any Duty paid. 145.

1st,

1st, This is *not* such a Sum as is within 8 Ann. c. 9. sect. 35. and 39. 146. 147.

2dly, Section 35. which requires inserting the full Sum in Words at length, does not make the Indenture void: It only subjects the Master to a Forfeiture. *Ibid.*

3dly, Section 39. only requires a true Insertion. 146.

Two Infant Orphans being with their Grandmother at Tirley were N^o 49. removed from thence to Hasfield. One (the Boy) had an Estate of Inheritance in Tirley: The other (a Girl) was legally settled in Hasfield. These Orders (of Removal, and Confirmation of it by the Sessions) were quashed as to the Boy, and confirmed as to the Girl. 148. 149.

1st, He was not removable from the Parish where He had an Estate of his Own. *Ibid.* V. ante, N^o 40.

2dly, Infants of very tender Years being sent for Nurture extends no further than to their Mother; not to a Grandmother. 149.

An original Order of two Justices must shew that one of them is N^o 50. of the Quorum: And the Words—"And whereof, for the said County"—do not suffice for that Purpose. 150.

But it is not necessary to shew "That the Complaint was made upon Oath:" For the Statute (13 & 14 C. 2. c. 12.) does not require it to be upon Oath. *Ibid.*

A Sessions Order, confirming an original Order removing the N^o 51. Widow and Child of James Bowles to East Knoyle, stated that it appeared to them upon Evidence "That he was bound an Apprentice to W. W. of East Knoyle and served him three Years there under the Apprenticeship:" But the Indentures were NOT produced; neither did it appear to them whether the Duty was paid, or whether the Indentures were stampd. It was objected "That the Sessions had gone upon Evidence which was not legal: And "that the Indentures ought to have been produced, or an Account given why they could not be so; and it ought to have appeared that the Duty was paid and the Indentures stampd." This Objection was overruled; and the Motion to quash the Orders denied. 151.

Mary Calcot was hired for a Year, in Cambden, to spin Wick- N^o 52. yarn AT THE RATE of 1 s. 6 d. a STONE; and was to PROVIDE HERSELF with Meat Drink Washing and Lodging. She spun for her

Master a whole Year; and lodged and boarded with him, allowing him for it. She thought she was at Liberty to play and be absent as long as she pleased; being paid at a certain Rate for Work done. This is a clear Settlement in Cambridgen: And 'tis not material what the Work was. 152. V. Post, N^o . N^o . N^o .

N^o 53.

An Order of Removal of a Wife and Children to the last Settlement of the Husband was objected to; because it amounted to a Divorce, to remove the Wife without her Husband. But the Court over-ruled the Objection. It does not appear that he was not at the Place: And the Complaint of Intrusion went only to the Wife and Children. 153.

N^o 54.

A Certificate-man took an Apprentice, who served him upwards of two Years: And then he assigned him (with his own Consent) to a Master living in another Parish (Lydd;) where he served out his Time. The Apprentice gained a Settlement in Lydd, under this Assignment and Service, notwithstanding 12 Ann. stat. 1. c. 18. s. 2. 156. 157.

N^o 55.

1st, The Hiring necessary towards gaining a Settlement must be for a complete Year: A Hiring from the 14th of November to next Martinmas is not sufficient. 158. 160.
2^{dly}, By 13 G. 2. c. 18. sect. 5. the Certiorari to remove Orders must be brought within six Months; and there must be Proof of six Days Notice given to the Justices who made the respective Orders. 159.

N^o 56.

The Master of an Apprentice became a Certificate-man after the Expiration of the Indentures. It was objected "that his becoming a Certificate-man afterwards, was immaterial; as he was not so during any Time of the Apprenticeship." The Order was quashed on this Exception, without any Cause shewn. 161.

N^o 57.

1st, The Court can not intend any Thing, to vitiate an Order. 162.
2^{dly}, The Age of a Child needs not be specified, where the Justices expressly adjudge it's Settlement to be at the Place to which they remove it. Ibid. V. ante, N^o 26. N^o 29. N^o 45.

N^o 58.

The Sessions can, under 5 G. 2. c. 19. amend Defects in Form only: They can not amend Merits or what requires Examination; as, adding

adding "That the original Order was made *upon the Complaint* of " &c;" or an *Adjudication* "That the (Certificate) Paupers were " *become actually chargeable* &c;" or, "that the two Justices were " *Justices of the County;*" or, "that one of them was of the *Quorum.*" 165. 166.

A Man rented a Tenement of 10*l.* a Year; but had *not sufficient* N° 59. *Stock* for such a Tack: And being told "It was too dear, at 10*l.* " a Year," answered "that he did not value the Dearness; for, as " it was 10*l.* a Year, it would gain him a Settlement." 166.

1st, The Value of his *Stock* is not material: The Value of the Tenement is the Point. 167.

2dly, The Court looked upon the *Rent* reserved, as the *Estimate* of the real Value; since the Justices did not state "that " the Tenement was *under* that Value." *Ibid.*

3dly, If the Justices do not state "that there is *Fraud,*" the Court will *not* suppose that it is *fraudulent.* *Ibid.*

An Order of two Justices removed *Thomas Price* and *Mary his* N° 60. *Wife* from *Berkswell* to *Balsall*; and was *not appealed from.* Afterwards, two Justices removed the *same Mary*, by the Name of *Mary Smith*, SINGLEWOMAN, from *Balsall* to *Berkswell.* This latter Order, and the Order of Sessions confirming it, (though it adjudged her, upon hearing the Merits, to be a Singlewoman,) were quashed, *without Defence.* 168.

John Spiller, the Pauper, was a *Mortgagee* of a Term for 15*l.* N° 61. and 30*s.* was due to him for Interest, and 18*l.* 10*s.* more, on bond and simple Contract. The Mortgagor died. *Spiller* took out *Administration*, as principal Creditor; entered and was possessed; and so continued, till removed by the original Order. *Spiller* gained a Settlement, as a *Purchaser* for a Consideration of more than 30*l.* *bona fide paid*; and therefore was not within 9 G. 1. c. 7. sect. 5. 170.

Thomas Parsons came from *Woolverstone* to the Parish of *St. Nicholas* N° 62. *in Harwich*, with a proper and regular Certificate from *Woolverstone*, acknowledging him to be "legally settled in *Woolverstone.*" This Certificate was directed "to the Churchwardens and Overseers " of *Harwich near Dover Court.*" But there is no such Parish: And there is only one Parish in *Harwich*; the proper Name whereof is " *St. Nicholas in Harwich.*" It did not appear, whether the Inhabitant of *St. Nicholas's*, to whom this Certificate was delivered by

Parsons, was a *Churchwarden* or *Overseer* of the Parish of *St. Nicholas*. *Parsons* was charged and paid to the public Levies of *St. Nicholas*'s. He also hired a Tenement there, pretended to be of the yearly Value of 10 *l*. But this was adjudged to be, and appeared to the Court to be, a *fraudulent* Hiring. *Parsons* was removed from *Woolverstone* to *St. N*: And the Order confirmed at Sessions. But both Orders were *quashed* by this Court. 171 to 177.

1st, It is *not* necessary that a Certificate be *directed* to any Parish: And a *Misdirection* does *not* render it ineffectual. 176.

2dly, Though it did not appear that the Person to whom the Certificate was *delivered*, was an *Officer* of the Parish (either *Churchwarden* or *Overseer*;) yet the Parish who *gave* it are *bound by it*; having *acknowledged* the Man to be *their* Parishioner. *Ibid*.

Nº 63.

1st, A *Certificate*-man shall gain a Settlement by renting *ten Pounds a Year*, although the *whole* of it does not lie in the *same Parish* to which he came by Certificate. 179.

2dly, The *Ages of Children*, in consequential Settlements, must either be *set forth*, or it must be expressly *adjudged* "that they have gained no other." 178. *V. ante*, Nº 26.

Nº 64.

John Roberts was hired for a Year in *Ladock*. His Master died within the Year; leaving *W. H.* of *St. Enedor*, his Executor. The Executor asked the Servant "If he was willing to serve him for the Remainder of the Year." The Servant agreed to it; and *did serve the Executor*, in *St. Enedor*, during the Remainder of the Year. This is a *Continuance* of the *same* Service; the Contract was *not dissolved* by the *Death* of the Master; and the Servant gained a Settlement in *St. Enedor*. 181. 182.

Nº 65.

Children of a Certificate-man (born either before or after the Certificate, or born in the Parish to which the Father came by Certificate,) are *restrained* from gaining a Settlement in *that* Parish, by *any other Act* than one of the *two* specified in 9 & 10 *W. 3. c. 11*. But they are *not* restrained from gaining Settlements in *other* Parishes, just in the *same* Manner as any one else might do. 184. 185. 186. *V. Post*, Nº 88. Nº 92. Nº 112.

Nº 66.

A single Woman, *then with no Child*, came from *Helton* to *Lydlinch*, with a *Certificate* under the Hands and Seals of the *Churchwardens* and *Overseers* of *Helton*, *duly and legally made executed and delivered*;

delivered; and was brought to Bed of a *Bastard-Child* at *Lydlinch*: The *Bastard* is settled at *Lydlinch*, and can not be removed to *Helton*. 189. 190. *V. Post*, N^o 90.

1st, This *Certificate* is here *sufficiently described*, to shew that *Lydlinch* was obliged to receive the Woman. 189.

2dly, No *Fraud* appears: Nor can any be *presumed*, when none is stated. *Ibid. V. ante*, N^o 59. accordingly.

3dly, *Legitimate Children only*, of *certificated Persons*, can be sent back under 8 & 9 *W. 3. c. 30*: Their *Bastards* are not within it. *Bastards* are settled where they are born. 190.

An Original Order of two Justices removed *Thomas Hankin* and N^o 67. *Hester* his Wife from *Nympsfield* to *Woodchester*; and was confirmed at Sessions, for want of Appeal. This *Confirmed Order* is *conclusive* upon *Woodchester*, even as to *after-born Children*: And they shall not be permitted (on a second Order of Removal of the Man and such after-born Children from *Nympsfield* to *Woodchester*) to *controvert* the Validity of *Hester's Marriage*. 193. *V. Post*, N^o 86.

An Order of Sessions quashing an Original Order because *One of* N^o 68. the *Justices* who made it was at that Time an Inhabitant, and was *charged and paid to the Poor's Rate* of the Parish from whence the Pauper was removed; and Ordering the *Costs* of maintaining the Pauper to *attend the Event* of the Cause; was affirmed as to the former Part, and quashed as to the latter. 196 to 198. For

1st, The Justice was *interested*: And no Man can be Judge in a Case where He is *interested*. 196. 197. But *N.B.* This was prior to 16 *G. 2. c. 18. sect. 1.* which *impowers* Justices of Peace to act in certain Cases relating to Parishes and Places to the Rates and Taxes of which They are rated or chargeable. 196. 197.

2dly, The Justices at Sessions can not give *Costs* in this *eventual* Manner. Therefore *that* Part of their Order was void. 197. 198.

1st, An *Indenture of Apprenticeship* written upon UNSTAMPED N^o 69. Paper or Parchment, is, by 5 *W. & M. c. 21. sect. 11.* *inadmissible in Evidence*, and *unavailable in Law or Equity*: And therefore Justices of Peace ought to have *no Regard* to it, where a Settlement under it is in question. 200. 201. *V. Post*, N^o 80.

2dly,

2dly, See the several *Stamp-Acts* relating to *Indentures of Apprenticeship* discussed, compared, and distinguished. 199.

3dly, Adjudication in the *præterperfect* Tense—"That G. was the Place of last legal Settlement is well enough. 200.

4thly, A Reference to the Margin (if clear and plain) is sufficient in an Order: Not so, in an *Indictment*. 200. 201. *V. ante*, N^o 12. N^o 45.

N^o 70.

An Original Order of Removal was holden good, though the Justices call themselves Justices for the County of *Shropshire* (instead of *Salop*;) and though they add an *unnecessary* historical declaration to their positive Adjudication of the Place of Settlement. 203.

The *Ages of Children* removed with their Parents must be specified; or their Place of Settlement *adjudged particularly*. *Ibid.* *V. ante*, N^o 26. 29. 45. 57. 63. & *post*, 72.

N^o 71.

Ralph Harrison was hired FOR ONE YEAR to T. B. of *Barton*, at 4 *l.* wages, payable Quarterly: And it was agreed between them, at the Time of the Hiring, "That Either the said Master or Servant should be loose from or at Liberty to determine the said Contract or Hiring, at the End of any Quarter of the said Year; " Either of them giving a Month's Notice to the Other." But no such Notice was ever given by Either: And the Servant continued in his said Master's Service in *Barton*, the whole Year. The Servant declared, at the Time of the Hiring, "That the reason of the said Hiring being made determinable at the End of every Quarter upon such Notice as aforesaid, was, That He would not be hired so as to lose his former Settlement." *Per Cur'* unanimously and clearly, This is a good Settlement in *Barton*. 204. 205. *V. ante*, N^o 1. 7.

N^o 72.

1st, An Original Order was quashed as to the *Children*; because it neither set forth their *Ages*, nor adjudged their Settlement. 210. 211. *V. ante*, N^o 26. 29. 45. 57. 63. 70. *post*,

2dly, The Sessions appealed to from an Original Order may adjourn the Appeal to an adjourned Sessions, (*viz.* "to the next General Quarter-Sessions to be holden by Adjournment at B. 210. But They can not give Costs, upon a mere Adjournment of the Appeal, without bearing it. *Ibid.*

3dly,

- 3dly, A PASS-WARRANT *unappealed from* has not the same *conclusive Effect*, as an Original Order of Two Justices *unappealed from* shall have. The 13 G. 2. c. 24. *sect. 7. for passing*, had a different View from that of 13 & 14 C. 2. c. 12. for *fixing Settlements*. 211. 212. *V. Post*, N^o 74.
- 4thly, A Certificate-Person may gain a Settlement by a PURCHASE. 210 to 212. *V. Post*, N^o 75.

An original Order removed *Elizabeth Smith* the Wife of *Job Smith*, and *J. A. T.* and *M.* her Children (not setting out their Ages, or adjudging their Settlement,) from *R.* to *N.* as the last legal Place of Settlement of *Job Smith*, (generally, without adding "*the said.*") It was *quashed* (together with the Order of Sessions confirming it) as to the Children; because they did not appear to be his Children, being only described as *her* Children: But both Orders were affirmed as to the Woman; for the Court would *intend* him to be the same *Job Smith*. 213.

The same Resolution with N^o 72. Subdivision 3. "That *PASSES* N^o 74. "are only intended to *prevent Vagrancy*; and the Place of last legal Settlement *remains to be determined afterwards.*" 219.

A Certificate-man living in *Deddington* with his Wife and Son N^o 75. made a PURCHASE there, with his own Money, and paid 42*l.* for it: The Son lived with him in it for many Years, as Part of his Family; and never gained any Settlement of his own. The Father SOLD it; remained alive; but without any Estate whatsoever in *Deddington*. 220. 221.

1st, The Certificate-man gained a Settlement in *D.* by this PURCHASE. 222. *V. ante*, N^o 72. 4th Subdivision.

2dly, The Son also is settled at *Deddington*: For, *legitimate Children*, who have no Settlement of their own, must derive from the last legal Settlement of their Father. *Ibid.*

A Certificate-man was told by his Wife. "that he was chosen N^o 76. "*Borsholder* at a Court-Leet of the Manor:" But he did not know it of his own Knowledge; nor was there any Evidence of a *Presentment* by the Leet-Jury, or of his Appointment or Election; nor did he ever take the Oath of Office. 224.

1st, When an Order of Sessions states the Facts specially, the Court must take it that the Justices have stated all the Evidence that appeared to them. 226.

2dly,

2dly, This Evidence is in the *Negative* of a LEGAL PLACING in the Office. 226. 227.

3dly, Though a Burrough may extend *further* than a Parish, yet it may be executing an annual Office *in* the Parish. 227.

Nº 77.

A *Certificate* acknowledging the Paupers to be *Inhabitants* of their Parish; and *promising* "to receive and provide for them as *Inhabitants*, without putting the other Parish to any Charge about them;" but not using the Words "*legally settled*;" was holden by the Sessions to be *no Obstruction* to the Settlement of an *Apprentice* to the Certificate-man. But this Sessions Order was quashed, upon an Objection "that this is a *good Certificate*, as it uses Expressions *tantamount* to saying *legally settled*. But N. B. there was *no Defence*. 228. 229. 230.

Nº 78.

Elem, the Pauper, let himself to *Corbet*, a Blacksmith at *Lowestoft* from *Michaelmas* to *Michaelmas* following, to receive his Wages from TIME TO TIME AS HE WANTED. He continued his Service till *Michaelmas* following; and then hired himself to his said Master again, for another Year, and continued about *Ten Weeks* of it. Within the first Year, *Elem*, with his Master's Consent, worked for a Week with one *L.* as a Journeyman-Blacksmith; and, with the like Consent, with one *Lawes* for a Fortnight; and at some Times, not exceeding 24 Hours at any One Time, nor above 3 Days in the Whole, went off to Sea in a Fishing-Boat, with his Master's Consent. It was agreed "that *Elem* should have all the Wages He earned, *Corbet* deducting in Proportion to the Wages He was to pay him, for the Time of his Absence:" And a proportional Part was deducted accordingly. (The whole Absence was 3 Weeks and 3 Days.) 230. 231.

1st, No *Fraud* can be intended; because None is stated. 231.

2dly, *Elem's* Settlement is in *Lowestoft*: For, nothing here stated does either vitiate or dissolve the Contract; being with the Consent of the Master; and dispensed with too, by his receiving him again. 'Tis a mere Lending of his Service. 232. V. Post, Nº 85.

Nº 79.

Mary Hembury was married to *William Hellyar* by a Person in a Black Coat and Band, whom She apprehended to be a Clergyman, but has been since informed "That He was a Layman." After cohabiting as Man and Wife 9 or 10 Years, *William Hellyar* was regularly

regularly married to the Pauper Eleanor. Two Justices removed Eleanor as the Wife of William Hellyar, from Symondsbury to Luffington; adjudging Her to be settled there; And their Order was confirmed on Appeal. Both Orders were quashed. 235.

1st, *The Validity of a Marriage by a Person not in Holy Orders was argued. 233. 234.*

2dly, *But the Court quashed the Orders, for the Imperfection of the State of the Case, not upon the Merits. 235.*

An Indenture of Apprenticeship NOT STAMPT according to any N^o 80. Act of Parliament is void to all Intents and Purposes whatsoever, and ought not to be received or admitted in Evidence. 237. 238. V. ante, N^o 69. Subdivisions 1. 2.

A Certificate-man was elected and sworn Tithing-man for a Tithing N^o 81. which did not extend through all the Parish of Fittleworth, but comprehended THAT PART of it where He resided. He executed the Office a little more than Five Months; and then became actually chargeable, and asked Relief: Whereupon two Justices removed him; and their Order was affirmed. 238 to 242.

1st, *The Justices had Jurisdiction to remove him, though in Execution of the Office; He being become actually chargeable. 240. 241.*

2dly, *It is not necessary that the Office should extend throughout ALL the Parish: The Act of 9 & 10 W. 3. c. 11. only requires Executing some annual Office in the Parish. Ibid. V. ante, N^o 10.*

3dly, *But it must be executed for the Space of a WHOLE Year. 242.*

4thly, *The present Case being an Execution for LESS than a WHOLE Year, it did not avoid his Certificate: For it did not gain Him a Settlement in Fittleworth. Ibid.*

Forty Days Residence in a Parish (to gain a Servant a Settlement N^o 82. in it) needs not be 40 Days All together: Forty Days in all, at different Times, will suffice. 243. 244. V. ante, N^o 40. and N^o 44.

Thomas Membury resided at Melborne under a Certificate from N^o 83. Sheephead, and officiated as Schoolmaster of Melborne. During his Continuance in the said School, Lands were conveyed upon Trust "to pay 10 l. per Annum to the School, to be paid to the VICAR

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" for

"for the Time being:" Which Sum the said Membury received from the Vicar, from the Execution of the Conveyance, to the Time of his Death. This was no Freehold in Membury; nor did it gain Him a Settlement in Melborne. 245 to 247.

N^o 84.

A Parish-Girl was bound Apprentice until 21. absolutely; without the Alternative "OR till Time of Marriage." She served near 5 Years in St. Petrox. Then her Mistress, by Indorsement on the Indenture, delivered up the Indenture, together with all her Right, Interest and Term of Years then to come and unexpired, of the said Apprentice to Philip Foale of Stoke-Fleming: And the Girl served Foale there, several Years. The Quarter-Sessions of the County vacated this Indenture. Two Justices removed Her from St. Petrox to Stoke-Fleming: The Sessions discharge their Order. This Order of Sessions was quashed; and the Order of two Justices affirmed. 248 to 250.

1st, The Indenture of Apprenticeship could not be discharged and vacated but by Four Justices under their Hands and Seals pursuant to 5 Eliz. c. 4. sect. 35. 250.

2dly, It was not void; though perhaps not obligatory upon the Parties. Ibid. V. N^o 28. Subdivision 2.

3dly, The Girl gained a Settlement in Stoke-Fleming, by her Service there: For though an Apprentice in Strictness can not be assigned; yet as all this was by Consent of the Mistress, It gained a Settlement. Ibid. V. N^o 28. ut supra.

N^o 85.

William Markham was hired for a Year, and lived with and served his Master in Northbourne till within three Weeks of the End of the Year; when He asked his Master to give him LEAVE to go to the Herring-Fishery. The MASTER CONSENTED; If He could get a Man to do the Master's Work, to his Liking. Markham did so, and paid the Man. Markham went to Sea; and returned at the End of the Herring-Fishery, which was about 3 Weeks after the End of his Year. The Master paid Him all his Year's Wages. This was no Dissolution of the Contract: It is like the Case of Beccles, (ante, N^o 78.) or rather stronger. Markham gained a Settlement in Northbourne, by this Service. 251. 252. V. ante, N^o 78. Post, N^o —

N^o 86.

Maidstone gave a CERTIFICATE acknowledging Richard Burden and MARY his Wife to be their Parishioners; believing Mary (late

(late Broomball) to be his lawful Wife: But in Fact, He had a prior lawful Wife, MARY LEE. Maidstone is bound by this Certificate; and concluded from saying "That Mary Broomball was not his Wife." They are obliged to receive Her and her Children by Burden, when actually chargeable; as well as to maintain his lawful Wife and his Children by Her, if removed to their Parish. 253 to 256. (V. ante, N^o 67. and Post, N^o.

Joseph Garnsey hired himself for a Year to Dr. Lucy, and lived a Year with Him in St. Andrew's, and had his Wages and Livery; and WITHOUT coming to any new Agreement, CONTINUED with Him there a Quarter of a Year longer. Then the Master removed, with his Family (J. G. being One) to St. Cuthbert's, where the said J. G. CONTINUED to live with Him about six Months, still under the FIRST Contract. The Servant's Settlement is in St. Cuthbert's. 258. 259.

1st, This was a Continuance in the SAME Service (within 8 & 9 W. 3. c. 30. sect. 4.) 258. V. ante, N^o 37 and N^o 64. and Post, N^o 98.

2dly, If a Person having a Settlement in One Parish gains a Settlement in another Parish, He thereby loses his Settlement in the former Parish. Ibid.

3dly, A Hiring for a Year, a Service for a Year, and a Continuance in the SAME Service (though without a new Contract) gain a Settlement in the Parish where the Service was performed for the last 40 Days. Ibid.

The Son of a CERTIFICATE-Man, BORN in the Parish (of N^o 88. Bray) to which his Father came by Certificate, being Twenty-Years old, but not having gained any other Settlement, was hired for a Year, AND SERVED FOR A YEAR in the same Parish (of Bray:). He gained no Settlement in Bray. As He had the Advantages of the Certificate, He ought to be bound by the Terms of it. 259. 260. V. ante, N^o 65. S. P. accordingly.

The Rule "That an Order of Sessions discharging an original Order of two Justices is "FINAL AND CONCLUSIVE between the "same two Parishes who were contending," (V. ante, N^o 6.) holds only where the Circumstances remain the same; not where they do not remain the same. Therefore if Certificated Persons are removed before they are chargeable, and the Order be discharged on Appeal,

this Discharge is *no Objection* to a *second* Order of Removal to the *same* Parish, (*viz.* the Parish who gave the Certificate) if they afterwards become ACTUALLY chargeable. 262. 263.

N^o 90.

The Parish of *Shelfe* give a *Certificate* to *Sarah Catton*, whereby they undertook to provide for Her AND HER CHILD, whenever they should become chargeable. She came with *this Certificate* from *Shelfe* to *Hipperholm* on 20th *March*, being THEN PREGNANT with a BASTARD-Child; and was delivered of it in *April* following, at *Hipperholm*. The Bastard's Settlement is at *Hipperholm*, where it was born. 264. 265. *V. Ante*, N^o 66.

1st, The Child called "*her Child*" in the Certificate must be understood and taken to be a *legitimate* Child of Hers, *then in being*. 265.

2dly, It does not appear that the Parish which gave Her the Certificate KNEW "that She *was* then with Child." *Ibid.*

3dly, The *Case* could not be sent back to the Sessions to be more fully stated, without *Consent*: And *Hipperholm* refused to consent. *Ibid.*

N^o 91.

A Parish-Apprentice was bound to *Thomas Jackson*. He carried him to the Reverend Mr. *Jackson*; who *accepted received* and *provided* for him: And the Boy lived with Him *Eight Weeks* in *Clapham*. The Boy was afterwards placed as an *Apprentice* with his Brother in *Austwick*, BY the Reverend Mr. *Jackson*; and served his Brother, as an *Apprentice*, a *Twelvemonth* or *Two*, in *Austwick*; who took him as an *Apprentice*, and quitted the Reverend Mr. *Jackson* of him: But the Representatives of the *FIRST Master* (who was then dead) KNEW NOTHING of this, nor ever ASSENTED to it. The Boy's Settlement is in *Austwick*. 267. 268. *V. Ante*, N^o 5. and N^o 43.

1st, The Reverend Mr. *Jackson* must be considered as receiving the *Apprentice* under the Terms of the *Indenture*. *Ibid.*

2dly, The Service to his Brother was NOT a NEW Binding; but a Service under the *Original* Binding. 267.

3dly, No *actual Assent* of the *first Master* needs to be stated; because He had DELIVERED OVER all his Right to the *second Master* (the Reverend Mr. *J.*) together with the *Indenture*. *Ibid.*—*V. Post*, N^o 95.

N^o 92.

The CHILD of a CERTIFICATE-Person, born (after the Certificate given) in the Parish to which it's Parent came by Certificate,
is

si not under the Restraint of it's Parent's Certificate as to any other Parish; but may gain a Settlement in a third Parish, by serving an Apprenticeship in it. 270. V. Ante, N^o 65. Post, N^o 112. N^o.

John Green came with a Certificate from Royston to Ampthill acknowledged Him and his Wife and Children (of whom Thomas the Pauper was One) and promising to own them; "unless They or any of them shall gain in Law a Settlement according to the Statutes of this Realm that shall justify a legal Settlement in Ampthill." Thomas the Son, after He was twenty-one, married in Ampthill, and left his Father, and lived there with his Wife and Children distinct from his Father. Three Years after the Son's Marriage, the Father removed to Bugden, and gained a Settlement there: But neither his Son, nor his Son's Wife or Children ever lived there. The Son had never, from his Birth, gained any Settlement for Himself by any Act of his Own. Resolved "That this subsequent Settlement gained by the Father CANNOT communicate a Settlement in Bugden to the Son who never lived there; and ceased to be Part of his Father's Family, by becoming Head of a distinct independent Family of his Own." 271. 272.

A Service under an Apprenticeship, where One Part of an Indenture was prepared, but no Indenture executed, was holden by the Justices to gain a Settlement. But, it being objected "That this was not such a Binding as can gain a Settlement, there being no Indenture duly executed;" — Their Order was quashed without Defence. 273. 274.

An Apprentice left his Master: The INDENTURES were EXCHANGED between his Father and the Master, by Consent of the Apprentice. Afterward, the Father contracted with W. S. of Twyford, for binding his Son Apprentice to Him for four Years. His Son went to W. S. on Trial, and lived with Him in Twyford One Year and Three Quarters: But no Indenture was executed, nor any other Agreement made. The former Master KNEW of his being in the Service of W. S. but no Other Proof was made "that He CONSENTED OR AGREED to the Agreement between the Lad's Father and W. S." The Apprentice gained no Settlement in Twyford: For there is NO CONSENT of the first Master to his Living there. So that the Service there could not be under the first Indentures, even if they had SUBSISTED: But they did not subsist; The Exchange

Exchange of them amounted to a *Cancelling*, an *Annihilation*, an *entire Discharge* of them to all Intents and Purposes. 274. 275. *V.* Ante, N^o 91. and Post, N^o .

N^o 96.

John Bunting and his Wife and Children were removed from *Sutton St. Mary's* to *Leverington*. *Leverington* did not *Appeal*: And yet the Sessions *confirmed* this Original Order, though *un-appealed* from. *Four Months* after the first Order, a *second* Original Order was made, to remove the Paupers from *Leverington* to *Sutton*: Which second Original Order was confirmed at Sessions. *Per Cur.* The *second* Original Order, and the Order of Sessions confirming it, were *quashed*. The *first* Original Order was *confirmed*: But the Order of Sessions made in Confirmation of it was *quashed*, as being *voluntary and extrajudicial*. 277.

1st, *Leverington* was bound by the first original Order *unappealed* from; UNLESS some *subsequent* Settlement appears. *Ibid.*

2dly, *Four Months* is not a sufficient Distance of Time whereupon to ground a *Presumption* of having acquired a new Settlement. *Ibid.* (*Four Years* have been holden *insufficient*. *Ibid.*)

3dly, A Confirmatory Order of Sessions made *without Appeal* from the Original Order confirmed, is void. 277. 278.

4thly, *Children* of so tender Age as Seven or Eight can not be supposed to have gained any other Settlement than their *derivative* One. *Ibid.*

5thly, One Reason for mentioning the *Ages* of *Children* is their not being removeable from their Mother whilst their very tender Age requires *her Nurture*. 278.

N^o 97.

When a *Father* who had no Settlement, is dead, a Question — “What should be done with the *Children* born in lawful *Wedlock*” — was discussed but not determined; the Facts not being sufficiently stated, and the Orders for *that* Reason affirmed. 279. — *V.* Ante, N^o 36. Post, N^o .

N^o 98.

Anne Stokes, the Pauper, when thirteen Years of Age went into *Chew Magna*, to the House of her Aunt; and soon afterwards went to *Winford* and worked with One *N. W.* Clothworker, in the Business of burling Cloths, by a *Weekly* Hiring or Agreement at the *Weekly* Wages of 1s. 6d. each *Week* in Winter and 2s. each *Week* in Summer. On *Saturday* in each *Week*, *N. W.* said to the Pauper “That
“ *She*

"*She should come the Week following:*" Which She accordingly did, and *renewed the Contract for the Week ensuing*, in the *same Method*. She continued to work with the said *N. W.* in *Winford*, in the Manner abovesaid for a *Year and a Half*; but during all that Time, *constantly returned in the Evening and lodged at her Aunt's in Chesham Magna*, and also resided with her Aunt there *on Sundays*. On the last *Saturday* of the said Service, the Pauper covenanted to serve the said *N. W.* for a *YEAR*, at *1l. 10s.* Wages; entered immediately into the *said Service*; and continued therein *ELEVEN MONTHS*, in *Winford*. 280.

1st, The Pauper did *not* acquire a Settlement by this Service in *Winford*. 281. 282.

2dly, For, though a subsequent Service for *less* than a Year, performed under a Hiring for a Year, may be *coupled* to a prior Service which was *not* performed under a Hiring for a Year; provided it be a Continuance of the *same Service*; 281.

3dly, Yet the *subsequent Service* can not, in the present Case, be *coupled* with the former; because the *former Hiring* was *NOT EJUSDEM GENERIS* with the *latter*: The former was as a *Day-Labourer*, or *Weekly-Labourer* at most; *NOT* as a *Hired Servant*, who is *Part of the Master's Family*. 289.

John Peake, the Pauper, being a *Lunatic*, was by a *Paper-Writing* N^o 99. BEARING THE FORM of a *Certificate*, dated in *December 1736*, mentioned to be *signed pursuant to the Act of Parliament* in that Case made and provided, sent to *Bethlem Hospital*. The said Paper Writing was *signed* by the Church-Wardens and Overseers of *St. George's*; *attested* by two Witnesses, and *allowed* by two Justices, according to the Statute in that Case made and provided: And the Hand of *Thomas Irwin Esq;* was subscribed as One of the Justices, to it: It was *delivered back* by the Deputy-Clerk of *Bethlem Hospital* to Mr. *Kindleside* Son of Mr. *Kindleside* deceased, who entered into Bond as a Security to defend the said Hospital against any Charges which they might be put to; and in Consequence whereof, *Kindleside* the Father did pay for eight Years that the Pauper was deemed incurable. *Kindleside* delivered this Paper-Writing to One *Sweetenham*, whom he believed to be a *Parish-Officer* of *St. George's*. It was *NOT PRODUCED* to the Sessions; nor did it appear to Them, that it was *signed* by any other Person than as above: Nor did it appear, that the Pauper had ever gained any Settlement in *St. George's*, OTHERWISE than by the

above Paper-Writing PURPORTING to be a Certificate. This Paper-Writing did *not*, in any Part of it, expressly *own* the Pauper to be an Inhabitant *legally settled in St. George's*. *Per Cur.* This is *not* a CERTIFICATE such as is meant by 8 & 9 W. 3. c. 30. And St. George's Parish are *NOT concluded by it*. 286.

- N^o 100. A Certificate-Man made a *Purchase* in the Parish to which He came by Certificate, for 10 *l.* but it was afterwards *improved* to be worth 80 *l.* 10 *s.* 1 *d.* But the *Merits* never came on; because the original Order was fatally ill, having removed these Certificate-Persons as being *LIKELY* to become chargeable, and *not* as *actually* so. 288. 289.
- N^o 101. A Boy was *hired* thus—He was to come for a *Quarter* of a Year, and to have *after the Rate of 20 s. a Year*: And *if He and his Master liked each other*, He was to *continue*. He *did continue* a Year and a Half above the said *Quarter*, without any further or other *Hiring*; and received his Wages, as He had *Occasion* for them. He *gained a Settlement*. 289. (There was *no Defence* indeed: But *V. ante*, N^o 1 and N^o 7. accordingly.) See also Post, N^o 109.
- N^o 102. Serving an *Apprenticeship* under a *PAROL Binding* will *not* gain a Settlement: For 3 & 4 W. & M. c. 11. *sect.* 8. requires a Binding by *INDENTURE*. 290. *V. Post*, N^o 104.
- N^o 103. This Case went back to the Sessions, to be *more fully stated*. 291.
- N^o 104. The Court can not adjudge a Settlement to be gained under an *Apprenticeship*, where there is *not enough stated* to shew “That there was a *Binding within the Act* (of 3 & 4 W. & M. c. 11. *sect.* 8.)” 292. 293. *V. ante*, N^o 102.
- N^o 105. A *Quarter-Sessions* must be holden *four Times* in a Year, as directed by Statute; and it may be adjourned from Time to Time, and from Place to Place: But if it is *ONCE DROPPED* for *Want of an Adjournment*, It can *not be resumed again*. 294.
- N^o 106. A Lad born in *St. Maurice's* under a Certificate from *St. Mary Kalendar's* served Seven Years *Apprenticeship* to *Stewart Mitchel* in *Kingsworthy*. But *Stewart Mitchel* the Master gave *PAROL Evidence*

dence " That HE HIMSELF came into Kingsworthy with a CERTIFICATE acknowledging him to be a Parishioner of Micheldever, and resided there AS a Certificate-Man from Micheldever during the whole Time of the Lad's Apprenticeship: Which Certificate from Micheldever he delivered to one Hide an Officer of Kingsworthy. But the present Overseer of Kingsworthy gave PAROL Evidence " That there " was now no such Certificate to be found in that Parish; and that " He had never seen or knew of any such; and that if there had " been any such, it was mislaid." [This Certificate, if there was one, must have been of above 21 Years standing.] The Sessions was of Opinion " That AS no Certificate in Writing was PRODUCED, this Lad's last legal Settlement was NOT in St. Mary " Kallendar's." This Court affirmed the Order of Sessions: They said they saw no Reason to quash it; as the Justices have been so far from rejecting Parol Evidence, that They had admitted all that was offered. 296 to 298.

A Boy of Seventeen, born in Wincanton, offered himself to N^o 107. serve Samuel Williams of Charlton Horethorne; who HIRED HIM to serve him in Husbandry, and agreed to give him Meat, Drink, Washing and Lodging and Cloaths when wanted; But no particular TIME was agreed on; and the Pauper apprehended " His Master might have been off, or he might have gone away from him, " at their Pleasure:" Nevertheless there was no Agreement for that Purpose. The Boy continued and served him in Charlton Horethorne two Years and an Half. He gained a Settlement there, by this Service. 299 to 301.

1st, A General Hiring is a Hiring for a Year. 300. V. Post,
2dly, Here are no Circumstances in this Case, to shew an Intention to the contrary, or to vary it from the general Rule.

301.

3dly, The mere Apprehension of the Pauper does not do so. Ibid.

William Hewett, settled in Oxleworth, agreed with Thomas Palsor N^o 108. of Wotton under Edge, Cloth-worker, to serve Him in the said Business for 3 Years, at so much a Week: He was to work 12 Hours in a Day; and if more, was to have a Penny an Hour, over. Sixpence a Week was to be retained as a Deposit: Which was to be repaid to Hewett if He performed the Agreement, or if Palsor should discharge Him before the End of the 3 Years; but to be kept by

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by *Palsor*, IF *Hewett* should QUIT the said Service before the End of the same Term. And it was UNDERSTOOD between them, "That *Palsor* might turn *Hewett* out of his Service, at any Time during the Term, paying Him the Sixpences retained." *Hewett* worked under the Agreement for about six Months; and then, BEING ILL, absented Himself about 3 Months; and then returned, and was RECEIVED by *Palsor*, and continued to work for Him, under the said Agreement, TILL the Time of his being removed by the Order, being for about Three Quarters of a Year after his Return. During the whole Time, *Hewett* lodged in the Parish of *Wotton under Edge*; but not in *Palsor's* House. Two Justices removed *Hewett* from *Wotton under Edge* to *Ozleworth*: And the Sessions confirmed their Order. But this court QUASHED both Orders. 302 to 304. *V. ante*, N^o 14. N^o 78. N^o 85. N^o 107.

N^o 109.

Rowe Port of *Ilam*, Esq; hearing that the Pauper was a likely Boy to serve Him as a Postilion, sent to have him upon Liking. AFTER the Pauper had served Him 8 Weeks on Liking, Mr. Port bired him for a Year, to COMMENCE from the BEGINNING of the said 8 Weeks: And He served Mr. Port, in *Ilam*, including the said 8 Weeks, a Year and Ten Days. It was objected "That this retrospective Hiring is no Hiring for a Year, within 3 & 4 W. & M. c. 11." And so the Court held; and that the Pauper gained no Settlement in *Ilam*. 304 to 307. *V. ante*, N^o 1. N^o 7. N^o 101.

N^o 110.

Though any Person who has an Estate of his Own (either Freehold, Copyhold, or a beneficial Term for Years) by Act of Law, (as Descent, Marriage, Executorship, Administration, or Purchase,) is not removable FROM it, and will gain a Settlement in the Parish where it lies, IF He continues 40 DAYS upon it; yet He must ABIDE there for 40 Days, in order to gain a Settlement: And neither He nor His can be removed TO it, from any other Place, unless he shall have RESIDED 40 DAYS. 307 to 311. *Vide ante*, N^o 4. N^o 40. N^o 42. N^o 72.

N^o 111.

Two Persons hire a House and Land at *Marden*, at Sixteen Pounds per Annum (which had been rented at 20 l.) and jointly occupied it, and jointly paid the Rent, each the like Sum. This gains no Settlement to either; for each has a Right to HALF of it only; which Half is under 10 l. per Annum Value. 311 to 313.

No

No Certificate-Person, nor any of his Family, can gain a Settle-^{Nº 112.} ment in the Parish where they reside under such Certificate, unless by One of the Two Methods prescribed by the Statute, viz. Hiring a Tenement of 10 l. per Annum yearly Value; or executing some annual Office in the Parish. 314. V. ante, Nº 65. Nº 88. Nº 92. |✓

Mersh occupied a Messuage, Farm and Lands in Lockerly. He^{Nº 113.} covenants with Edwards, a Dairy-Man, to let him a Dairy consisting of 16 Cows, with the Dwelling-house, and Feeding for the said Cows on 21 Acres of Clover-Ground and 13 Acres of Meadow-Land, with the After-Lease of a Mead; together with the Run of the Backside and the Arthes, for the Feeding of Pigs; and also the Run of one Horse, with the Cows aforesaid; from the 2d of February, for one Year. Mersh was to allow to Edwards all the short Wheat arising from the Corn growing on the Farm; and also to provide for the Use of the Cattle, when wanted, five Tons of Hay; and, for the same Feed of the Cattle, to cause 10 Acres of the Clover-Ground and 13 Acres of the Meadow to be laid up at Candlemas-Day, and the other 11 Acres of the Clover at Lady-Day; and also to put the Dwelling-house and Premises into Repair; and fetch Home the Goods, Necessaries and Fuel of Edwards. Mersh was to deduct 2s. per Week for every Cow not delivered of her Calf by the 1st of May, until she should be delivered; and also what may be reasonable, for every Calf wanting to such Cow. Edwards covenanted to pay Mersh, for and in Consideration of the Premises 3 l. 5 s. for every such Cow as aforesaid delivered to his Use and Possession as aforesaid, payable Quarterly; except as abovementioned.—Question—“Whether this be a TENEMENT within 13 & 14 C. 2. c. 12. sect. 1.”—Three Judges (Ld. Ch. J. absent) held clearly “That it is NOT.” A Tenement must lie in Tenure, and relate to Land: Whereas this is a mere personal Contract; an Agreement for the Use and Feeding of Cows. 315 to 318.

The original Order, having first mentioned the Parish of Eak-^{Nº 114.} ring, goes on and says “That the Pauper has lately intruded himself into your said TOWN of Eakring, and is likely to become chargeable THERE:” But does not explicitly say “Chargeable to the said Parish or Town.” The Order of Sessions states an Apprenticeship, the Death of the Master, and a subsequent Hiring for a Year and Service for a Year. 320.

1st, An *Apprentice* may, after the *Death* of his *Master*, gain a *Settlement*, by a *Hiring* for a *Year* and *Service* for a *Year*. *Ibid*.

2dly, The original Order is well enough; though it calls *Eaking* first a *Parish*, and then a *Town*; and though it does not explicitly say "Chargeable to it," but only "Chargeable there." 321.

Nº 115.

Richard Allen was *hired* for a *Year* from *Michaelmas* to *Michaelmas*, in *Tardebigg*. He came 3 *Days* after the former *Michaelmas*; and stayed one *Day* after the latter. He was *absent*, at different *Times*, near a *Fortnight*: For which *Absence* 6 s. 6 d. were deducted in his *Wages*. Then he went to *Hanbury*: Where he was *hired* for a *Year*; served three *Quarters* of it, and then married a *Woman* with *Child*. His *Master* complained to a *Justice of Peace*: The *Justice* thought this a *sufficient Cause of Discharge*, and allowed of his *Discharge*; but made *NO Order in Writing*. The *Master* thereupon discharged *Allen* (the *Pauper*) against his *Consent*. 322.

1st, He gained a *Settlement* in *Tardebigg*. 325.

1st, *Service* has not been taken so strictly as *Hiring* has. 325. 326.

2dly, The three *Days* *Absence* in the *Beginning* of it, was purged by the *Master's* receiving him. 326.

2dly, But his last legal *Settlement* is in *Hanbury*. *Ibid*.

1st, Here was neither *Hearing*, nor *Ordering*, nor reasonable *Cause of Discharge*. *Ibid*.

2dly, The *Justice's* *Order*, being an *Act of Jurisdiction*, ought to have been in *Writing*. *Ibid*.

Nº 116.

The *Pauper* purchased an *Estate* in *Cradley*, and paid 38 l. for it. He borrowed 24 l. of the *Money*, and mortgaged the *Premises*, for securing it. He never lived upon it, but resided in *Cradley* 7 *Years* of the *Time* he was *Owner* of it. He set it at 1 l. 18 s. 6 d. per *Annum*; was rated to the *Land-tax*, and allowed it. He sold it, and paid off the *Mortgage*. Two *Justices* removed Him to *Cradley*. The *Sessions* vacate their *Order*. This Court quash the *Order of Sessions*: Which No One defended. 326. 327. *V. ante*, Nº 17. Nº 18.

